IMPEACHMENT OF THE PRESIDENT.

WEDNESDAY, *April* 22, 1868

The Chief Justice of the United States took the chair.

The usual proclamation having been made by the Sergeant-at-arms,

The managers of the impeachment on the part of the House of Representatives and the counsel for the respondent, except Mr. Stanbery, appeared and took the seats assigned to them respectively.

The members of the House of Representatives, as in Committee of the Whole, preceded by Mr. E. B. Washburne, chairman of that committee, and accompanied by the Speaker and Clerk, appeared and were conducted to the seats provided for them.

The CHEIF JUSTICE. The Secretary will read the minutes of Monday's proceedings.

Mr. EDMUNDS. Mr. President, I move that the reading of the journal be dispensed with.

The CHIEF JUSTICE. Unless there be some objection it will be so ordered. The Chair hears no objection. It is so ordered. Senators, the business under consideration when the Senate adjourned on Monday was an order offered by the senator from Nevada, [Mr. Stewart,] which the clerk will read.

The chief clerk read as follows:

Ordered, That the managers on the part of the House of Representatives and the counsel of the respondent have leave to file written or printed arguments before the oral argument commences.

Mr. VICKERS. Mr. President, I beg leave to offer this as a substitute.

The CHIEF JUSTICE. The Secretary will read the substitute.

The CHIEF CLERK. It is proposed to strike out all of the proposed order, and insert in lieu thereof:

As the counsel for the President have signified to the Senate, sitting as a court for the trial of the impeachment, that they did not desire to file written or printed arguments, but preferred to argue orally, if allowed to do so: Therefore,

Resolved That any two of the managers other than those who under the present rule are to open and close the discussion, and who have not already addressed the Senate, be permitted to file written arguments at or before the adjournment of to-day, or to make oral addresses after the opening by one of the managers and the first reply of the President's counsel, and that other two of the counsel for the President who have not spoken may have the privilege of reply, but alternating with the said two managers, leaving the closing argument for the President, and the managers' final reply to be made under the original rule.

Mr. CURTIS. Mr. Chief Justice, it may have some bearing, possibly, on the vote which is to be taken on this proposition if I were to state what I am now authorized to state, that the extent of Mr. Stanbery's indisposition is such that it will be impracticable for him to take any further part in this trial.

The CHIEF JUSTICE. Senators, you who agree to the amendment proposed by way of substitute by the senator from Maryland will say aye.

Mr. CONNESS called for the yeas and nays, and they were ordered.

Mr. YATES. I ask for the reading of the amendment.

The CHIEF JUSTICE. The Secretary will read the original proposition, and also the substitute.

The chief clerk read the order proposed by Mr. Stewart and the amendment of Mr. Vickers.

The question on the amendment being taken by yeas and nays, resulted—yeas, 26; nays, 20; as follows:

YEAS—Messrs. Buckalew, Cragin, Davis, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson, and Yates—26.

NAYS—Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Drake, Ferry, Henderson, Howard, Howe, Morgan, Morrill of Vermont, Pomeroy, Ramsey, Ross, Sherman, Stewart, Sumner, Thayer, and Williams—20.

NOT VOTING—Messrs. Anthony, Bayard, Cole, Conkling, Dixon, Harlan, Nye, and Wade—8.

Mr. POMEROY. The senator from California [Mr. Cole] who sits by my side has been called suddenly to leave the city on account of a matter of deep interest to his family. He wished me to say this to the Senate in explanation of his absence.

So the amendment was agreed to.

The CHIEF JUSTICE. The question recurs on the order as amended.

Mr. CONNESS, called for the yeas and nays, and they were ordered; and being taken, resulted—yeas, 20; nays, 26; as follows:

YEAS—Messrs. Buckalew, Cragin, Davis, Doolittle, Fowler, Hendricks, Johnson, McCreery, Morton, Norton, Patterson of New Hampshire, Patterson of Tennessee, Saulsbury, Sumner, Tipton, Trumbull, Vickers, Willey, Wilson, and Yates—20.

NAYS—Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Henderson, Howard, Howe, Morgan, Morrill of Maine, Morrill of Vermont, Pomeroy, Ramsey, Ross, Sherman, Sprague, Stewart, Thayer, Van Winkle, and Williams—26.

NOT VOTING—Messrs. Anthony, Bayard, Cole, Conkling, Dixon, Harlan, Nye, and Wade—8.

So the amendment was disagreed to.

Mr. VICKERS. Mr. President, I send an order to the Chair.

Mr. Manager STEVENS. Mr. Chief Justice, I desire to make an inquiry; and that is, whether there is any impropriety in any manager's publishing a short argument after this vote. After the motion made here on Monday some few of us, I among the rest, commenced to write out a short argument. I expect to finish it to-night, and, if the first vote had passed, I meant to file it. I do not know that there is any impropriety now in printing it, except that it will not go into the proceedings. I would not like to do anything which would be improper, and I inquire whether there would be any impropriety?

Mr. FERRY. Mr. President, I inquire whether it would be in order to move the original order upon which we have taken no vote, introduced, I think, by the senator from Massachusetts, [Mr. Sumner.]

The CHIEF JUSTICE. It would not. As the Chief Justice understands, the matter is finally disposed of. A proposition has been offered by the senator from Maryland, [Mr. Vickers,] which will be read for information:

The chief clerk read the order proposed by Mr. Vickers, as follows:

That one of the managers on the part of the House be permitted to file his printed argument before the adjournment of to-day, and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager, under the existing rule.

The CHIEF JUSTICE. This order is in the nature of an amendment of the rules, and cannot be considered now unless by unanimous consent.

Mr. CONNESS. That was offered, I believe, two days since, if I am not mistaken, by the senator from Nevada.

The CHIEF JUSTICE. It has just been offered by the senator from Maryland. If there is no objection it will be now considered.

Mr. CONNESS. I offer a substitute for it.

The CHIEF JUSTICE. It is before the Senate for consideration, and the senator from California proposes a substitute.

Mr. SHERMAN. I should like to have it read again. It was not heard.

The CHIEF JUSTICE. In a moment. The Secretary will read the order proposed by the senator from Maryland, and also the substitute proposed by the senator from California.

The CHIEF CLERK. The order as proposed by the senator from Maryland is:

Ordered, That one of the managers on the part of the House be permitted to file his printed argument before the adjournment of to-day, and that after an oral opening by a manager, and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel, and the final reply of a manager under the existing rule.

The senator from California proposes to amend by striking out all after the word "ordered," and inserting:

That such of the managers and counsel for the President as may choose to do so have leave to file arguments before Friday, April 24.

The CHEIF JUSTICE. The question is on the amendment proposed by way of substitute.

Mr. CONNESS called for the yeas and nays, and they were ordered.

Mr. BUCKALEW. I would move to lay the resolution and amendment on the table; but I desire to have the order and amendment read again.

The CHIEF JUSTICE. The order and proposed amendment will be read again.

The chief clerk read the order and the amendment.

Mr. CONNESS. Mr. President, I wish to modify my amendment so as to read "on or before Friday, April 24."

The CHIEF JUSTICE. That modification will be made if there be no objection. The question is on the motion of the senator from Pennsylvania, [Mr. Buckalew,] to lay on the table the proposition and pending amendment.

The motion was not agreed to.

The CHIEF JUSTICE. The question recurs on the amendment proposed by the senator from California. Upon that question the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas, 24; nays, 25; as follows:

YEAS—Messrs. Cameron, Cattell, Chandler, Conkling, Conness, Corbett, Cragin, Drake, Ferry, Henderson, Howard, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Sherman, Stewart, Sumner, Thayer, Tipton, Willey, Williams, Wilson, and Yates—24.

NAYS—Messrs. Anthony, Bayard, Buckalew, Davis, Dixon, Doolittle, Edmunds, Fessenden, Fowler, Frelinghuysen, Grimes, Hendricks, Howe, Johnson, McCreery, Morgan, Morton, Norton, Patterson of Tennessee, Ross, Saulsbury, Sprague, Trumbull, Van Winkle, and Vickers—25.

NOT VOTING—Messrs. Cole, Harlan, Morrill of Maine, Nye, and Wade—5.

So the amendment was not agreed to.

The CHIEF JUSTICE. The question recurs on the order proposed by the senator from Maryland, [Mr. Vickers.]

Mr. JOHNSON. I move to amend the order by inserting "two" instead of "one" before the words "of the managers," at the beginning of the order.

Mr. SHERMAN. Say "all."

Mr. JOHNSON. No; I will not say all; that would be objectionable.

The CHIEF JUSTICE. The question is on the amendment of the senator from Maryland, [Mr. Johnson,] to strike out "one" and insert "two."

The question being put, the Chief Justice declared that the amendment appeared to be agreed to.

Mr. CONKLING called for a division.

Mr. HOWARD. I ask how the order will read if amended?

The CHIEF JUSTICE. It is proposed to strike out "one" in the first line and insert "two," so as to read:

That two of the managers on the part of the House be permitted to file, &c.

Mr. CONKLING. I beg to withdraw the call for a division; I made it under a misapprehension of the amendment.

The CHIEF JUSTICE. The Chief Justice announced the vote as agreed to. The amendment, then, stands as agreed to,

Mr. CONNESS. What is the state of the question now, the amendment adopted?

The CHIEF JUSTICE. The amendment is adopted. The question is on the order as amended.

Mr. Manager WILLIAMS. Mr. President and Senators, I beg leave to suggest, as I do very respectfully, that the effect of this order as it now stands, requiring that any argument which may be presented shall be in print to-day, will be to leave the matter substantially as it was before, because there is but one of the managers prepared, as I believe is well understood. Although three of them would like to put in arguments, there is but one of them who is so prepared just now; that is to say, whose argument is in print. So that, in this shape, it would be keeping the word of promise to the ear and breaking it to the hope.

Mr. JOHNSON. What time would the manager like?

Mr. Manager WILLIAMS. If you would say "written" instead of "printed," it would be satisfactory.

Mr. SHERMAN. I move that the order be so amended that "the managers shall have leave to file written or printed arguments."

The CHIEF JUSTICE. It is moved to strike out the word "two"——

Mr. SHERMAN. No, sir.

The CHIEF JUSTICE. The Chief Justice does not understand the amendment.

Mr. SHERMAN. Will the Secretary read the first clause, and I will submit an amendment.

The CHIEF JUSTICE. The Secretary will read the first clause.

The chief clerk read as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed argument.

Mr. SHERMAN. I move that the language be, "The managers on the part of the House be permitted to file printed or written arguments."

Mr. FESSENDEN. That cannot be done without reconsidering the vote by which we inserted the word "two."

The CHIEF JUSTICE. A motion to strike out the word "two" and insert anything else will not be in order; but a motion to add the words "or written" will be in order.

Mr. SHERMAN. I will then move to reconsider the vote adopting the amendment of the senator from Maryland, [Mr. Johnson,] inserting the word "two."

The CHIEF JUSTICE. The senator from Ohio moves to reconsider the vote by which the word "one" was stricken out and "two" was inserted.

The motion was not agreed to.

The CHIEF JUSTICE. The question recurs on the amendment to insert after the word "printed" the words "or written."

Mr. GRIMES. I wish to have the order reported, so as to know when these written arguments are to be filed. ["To-day."] Then I ask unanimous consent to inquire whether or not it is expected that the counsel for the President

will examine these written arguments to-day and be able to make a reply to them to-morrow morning?

The CHIEF JUSTICE. The question is upon adding after the word "printed" the words "or written."

The amendment was agreed to.

Mr. WILSON. I ask that the order be read, as modified.

The chief clerk read as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments before the adjournment of to-day, and that after an oral argument by one manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager under the existing rule.

Mr. CORBETT. Mr. President, I move to insert in place of the word "another" the word "two," so as to make it the same on the part of the President's counsel as on the part of the managers.

The CHIEF JUSTICE. The Clerk will read the order as it stands now, and as it will be if amended as proposed.

Mr. FOWLER. Mr. Chief Justice, the noise is so great in the hall that we cannot hear.

The CHIEF JUSTICE. Conversation in the Senate chamber must be suspended.

Mr. FOWLER. Particularly in the galleries.

The CHIEF JUSTICE. Conversation in the Senate chamber must be suspended, including the galleries.

The CHIEF CLERK. It is proposed to strike out the word "another" before the words "of the President's counsel," and to insert "two;" so that the order will read:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments before the adjournment of to-day, and that after an oral opening by a manager and the reply of one of the President's counsel, two of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager under the existing rule.

Mr. EVARTS. Mr. Chief Justice and Senators, if you will allow me to say one word on this question, as the rule now stands two of the President's counsel are permitted to make oral arguments. By the amendment, without the modification of inserting "two" instead of "another," we understand that three of the President's counsel will be enabled to make oral arguments to the Senate. That is as many as, under any circumstances, would wish or be able to do so.

Mr. Manager STEVENS. Mr. Chief Justice, this would embarrass the managers among themselves very much. Would it not do to say that "the managers and the counsel for the President may file written or printed arguments between this and the meeting of the court to-morrow?" That would disembarrass us of all our difficulties, and I cannot perceive its inconvenience.

Mr. BAYARD. Mr. Chief Justice, I move to lay the resolution on the table, and I ask for the yeas and nays.

Mr. NELSON rose.

Mr. BAYARD. I withdraw the motion.

Mr. FESSENDEN. Mr. President, I ask if the order was not adopted.

The CHIEF JUSTICE. It has not been.

Mr. FESSENDEN. I understood it to be adopted.

The CHIEF JUSTICE. It has not yet been adopted. An amendment was adopted, but the vote has not been taken on the order itself.

Mr. TRUMBULL. Mr. President, I should like to inquire what the question before the Senate is prior to the motion to lay on the table?

The CHIEF JUSTICE. The motion to lay on the table is withdrawn.

Mr. TRUMBULL. What is the motion pending?

The CHIEF JUSTICE. The motion pending is to strike out the word "another" and insert the word "two."

Mr. TRUMBULL. I would ask the unanimous consent of the Senate to appeal to the senator from Oregon to withdraw that amendment. The counsel do not ask it.

Mr. CORBETT. Mr. President, as the order is satisfactory to the President's counsel as it now stands without the amendment I withdraw the amendment.

The CHIEF JUSTICE. The question is on adopting the order. The clerk will read it as it now stands.

The chief clerk read as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments before the adjournment of to-day, and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply by a manager under the existing rule.

Mr. CONNESS. I ask for the reading again of the first part of the order.

The chief clerk read the order.

Mr. CONNESS. That, Mr. President, I desire to suggest——

The CHIEF JUSTICE. The senator from California can speak by unanimous consent.

Mr. CONNESS. I will not ask consent, nor speak. I move, at the instance of one of the managers, to amend so that it will read "before to-morrow noon," that that length of time be given to file either written or printed arguments, as they are not ready to-day.

Mr. GRIMES. How can the other side reply to-morrow?

Mr. HENDERSON. I desire to offer a substitute.

The CHIEF JUSTICE. The first question is on the amendment proposed by the senator from California, [Mr. Conness.]

The amendment was agreed to.

The CHIEF JUSTICE. The question now is on the substitute proposed by the senator from Missouri, [Mr. Henderson.] The clerk will read it.

The chief clerk read as follows:

Strike out all after the word "ordered," in the original proposition, and insert:

That all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before Tuesday, the 28th instant.

Mr. HENDERSON called for the yeas and nays on the amendment, and they were ordered.

Mr. THAYER. I move to lay the whole subject on the table.

Mr. SPRAGUE called for the yeas and nays, and they were ordered; and being taken, resulted—yeas, 13; nays, 37; as follows:

YEAS—Messrs. Buckalew, Conkling, Dixon, Doolittle, Edmunds, Grimes, Henderson, McCreery, Norton, Ross, Sprague, Thayer, and Williams—13.

NAYS—Messrs. Anthony, Cameron, Cattell, Chandler, Conness, Corbett, Cragin, Davis, Drake, Ferry, Fessenden, Fowler, Frelinghuysen, Harlan, Hendricks, Howard, Howe, Johnson, Morgan, Morrill of Maine, Morrill of Vermont, Morton, Patterson of New Hampshire, Patterson of Tennessee, Pomeroy, Ramsey, Saulsbury, Sherman, Stewart, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson, and Yates—37.

NOT VOTING—Messrs. Bayard, Cole, Nye, and Wade—4.

So the motion to lay on the table was not agreed to.

The CHIEF JUSTICE. The question is on the amendment proposed by the

senator from Missouri to strike out all after the word "ordered," and to insert what will be read by the Secretary.

Mr. HENDERSON. Before it is read I desire to modify it so as to make it read "Monday, the 27th," instead of "Tuesday, the 28th."

The CHIEF JUSTICE. The Secretary will read the amendment, as modified.

The chief clerk read as follows:

Strike out all after the word "ordered," and insert:

That all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before Monday, the 27th instant.

Mr. HENDERSON. I will say "before 11 o'clock on Monday, the 27th instant," so that they will be in at the time of meeting.

Mr. DOOLITTLE. Mr. Chief Justice, I desire to inquire of the Chief Justice whether under that rule all the managers would not be permitted to deliver oral arguments?

Mr. HENDERSON. It does not change the present rule.

The CHIEF JUSTICE. The Secretary will read the order proposed.

Mr. EVARTS. Mr. Chief Justice and Senators, as we understand the order now proposed, it would not enlarge the privilege of the President's counsel in addressing the court Any liberality that should be shown by the Senate, so far as it could be availed of by the President's counsel, under the peculiar circumstances in which they are placed, would probably need to include an opportunity on their part to make oral addresses.

Mr. NELSON. Mr. Chief Justice and Senators, I have felt, and still feel, an almost irresistible repugnance to saying anything to the Senate upon this subject. In the first place, in the view which I entertained of the Constitution and laws of our country, I regard it as a matter of right in the President of the United States to appear by counsel. I suppose, following the analogies of courts of justice, that the Senate, sitting as a court, have the right to regulate the number of counsel, and to confine it within reasonable limits. Inasmuch as the Senate had indicated, by a rule which was adopted before the commencement of the trial, the number of persons who were to address the Senate in the progress of the trial, I felt reluctant to ask that any alteration of that rule should be made in behalf of the President's counsel, for the very simple reason that it has never been to me a source of satisfaction to attempt to address an unwilling audience, and much less would it be a source of gratification for me to attempt to address the Senate when they had indicated by a rule that they were unwilling to hear further argument On a former occasion I stated to the Senate that, intending on our part faithfully to adhere to the rule which you had prescribed for the conduct and management of the trial, two of the President's counsel had determined not to address the Senate; that three others of the President's counsel had assumed, with our consent, the management and direction of the case, and that in our arrangement it was left to them to make the argument before the Senate. As an application was made on the side of the managers to enlarge the number, I thought that it would not be improper on our part to ask to be permitted to appear for the cause and to argue it. Since I made a few brief observations to the Senate the other day, Mr. Stanbery, upon whom we relied to make the leading argument in behalf of the President, has been confined by sickness. It is uncertain whether he will be able to address the Senate at all; the probabilities at present are that he will not; and even if he should make the effort, the chances are that he will be unable to make that argument to the Senate which he had intended to make.

Under these circumstances, I desire to say to the Senate that I would like to be permitted to address the Senate in behalf of the President. Indeed, I desire

that the rule shall be so enlarged as to give all the President's counsel the privilege of addressing the Senate. either orally or in writing, as we may find convenient to do. I have stated that, owing to the circumstances indicated, we have not prepared written arguments; and it is too late now for the two counsel who had not intended to address the Senate to make such preparation; but in the progress of the case I have made such notes and memoranda that I think I could argue the case before you; and I feel constrained by a sense of duty to ask the Senate, under these circumstances, to allow the whole of the counsel to make addresses.

I beg leave to assure you, senators, that in doing this I am not animated, as I trust, by a spirit of idle vanity, and by the desire to make an address in a great cause like this. I have lived long enough in the world to know that sometimes we can make more by our silence than by an effort to make a public address. I am satisfied from my experience that great risks attend such an effort, especially when we attempt to address the Senate or any other assembly extemporaneously; and were I to consult my own feelings and inclinations, I would not make this request; but, under the peculiar circumstances by which we are surrounded, if the Senate are willing to enlarge the rule, I choose to take the risk and to take my chances of endeavoring to argue the case before you, and I feel, senators, that, under existing circumstances, this is not an unreasonable request.

I may say, although I am not expressly authorized to do so, that I am satisfied the President desires that his cause shall be argued by the two additional counsel whom he has provided in the case, besides the three counsel who were heretofore selected for that purpose; and I trust you will not deny us this right. I trust that you will feel at liberty to extend it to all the counsel in the case. If we choose to avail ourselves of it we will do so. I have no sort of objection, so far as I am concerned, that the same right shall be extended to all or to more than an equal number of the managers on the other side. I trust that the resolution will be so shaped as to embrace all the counsel who are engaged in the cause in behalf of the President. I do not know that under these circumstances I shall be able to interest the Senate at all. But it is a case of great importance. On the trial of Judge Chase, six of the managers were permitted to address the Senate, and five of the counsel for the defendant were permitted to address the Senate; and in a great case like this, one of such momentous magnitude, a case in which the whole country is interested, is it asking, senators, too much at your hands, that you will enable us to present his case in the best manner that we may be able to do under the circumstances by which we are surrounded?

The CHIEF JUSTICE. The question is on the amendment proposed by the senator from Missouri, (Mr. Henderson.) The Secretary will read the original proposition again, and also the amendment.

The CHIEF CLERK. The original order is as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments on or before 11 o'clock to-morrow, and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager under the existing rule.

The amendment of the senator from Missouri is to strike out all after the word "ordered" and insert:

That all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before 11 o'clock of Monday, the 27th instant.

Mr. HOWARD. Mr. President, I rise to make an inquiry, whether the proper construction of the amendment offered by the honorable senator from Missouri

does not open the door and repeal the twenty-first rule; in short, whether it does not allow all the counsel on the part of the accused and all the managers who may see fit to make oral arguments in the final summing up?

Mr. CONNESS. To make that——

Mr. EDMUNDS. I object to debate.

Mr. CONNESS. To make that entirely clear, I move to insert the words "in accordance with the twenty-first rule."

The CHIEF JUSTICE. "Subject to the twenty-first rule."

Mr. CONNESS. Yes, "subject to the twenty-first rule."

Mr. HENDERSON. I accept the modification. That is what it means now.

The CHIEF JUSTICE. The Secretary will read the substitute as modified.

The chief clerk read as follows:

Ordered, That all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time after 11 o'clock of Monday, the 27th instant, subject, however, to the twenty-first rule.

Mr. CONNESS. I wish to insert that language at the beginning after the word "that," so that it will read "that, subject to the twenty-first rule" so and so shall be done.

Mr. HENDERSON. I suggest, after the words "oral arguments," to insert, "except the two managers delivering oral arguments under the twenty-first rule."

The CHIEF JUSTICE. The Chief Justice will suggest to the senator from Missouri that his object will be attained by accepting the amendment proposed by the senator from California, inserting the words "subject to the twenty-first rule."

Mr. CONNESS. I ask if it was my privilege to offer it as an amendment. I do not know why it was not accepted.

The CHIEF JUSTICE. The Chief Justice understood it to be accepted.

Mr. CONNESS. I suggest to the Secretary to write it.

The CHIEF JUSTICE. It was written and was accepted, as the Chief Justice understood, and then after it was accepted the senator from Missouri proceeded still further to modify his amendment.

Mr. CONNESS. I ask the Secretary to read it again as I moved it.

The chief clerk read as follows:

Ordered, That, subject to the twenty-first rule, all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before 11 o'clock of Monday, the 27th instant.

The CHIEF JUSTICE. The senator from California moves to amend the amendment proposed by the senator from Missouri by inserting after the word "that" the words "subject to the twenty-first rule."

The amendment to the amendment was agreed to.

Mr. TRUMBULL. Is an amendment still in order?

The CHIEF JUSTICE. It is.

Mr. TRUMBULL. I move to strike out all after the word "that" and insert what I send to the Chair.

The CHIEF CLERK. It is proposed to amend the amendment by striking out all after the word "that" and inserting:

As many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally.

Mr. EDMUNDS, Mr. STEWART, and others called for the yeas and nays, and they were ordered.

Mr. CORBETT. I call for the reading again.

The CHIEF JESTICE. The clerk will report the order, the amendment proposed, and the proposed amendment to the amendment.

The CHIEF CLERK. The order originally proposed is as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments on or before 11 o'clock to-morrow; and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager under the existing rule.

The senator from Missouri (Mr. Henderson) proposes to amend that by striking out all after the word "Ordered" and inserting:

That, subject to the twenty-first rule, all the managers not delivering oral arguments may be permitted to file written arguments at any time before the 24th instant, and the counsel for the President not making oral arguments may file written arguments at any time before 11 o'clock of Monday, the 27th instant.

The senator from Illinois (Mr. Trumbull) proposes to amend the amendment by striking out all after the word "that" and inserting:

As many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally.

The CHIEF JUSTICE. The question is on the amendment proposed by the senator from Illinois to the amendment of the senator from Missouri.

The question being taken by yeas and nays, resulted—yeas, 29; nays, 20; as follows:

YEAS—Messrs. Anthony, Buckalew, Conkling, Cragin, Davis, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Norton, Patterson of New Hampshire, Patterson of Tennessee, Ramsey, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, and Yates—29.

NAYS—Messrs. Cameron, Cattell, Chandler, Conness, Corbett, Dixon, Drake, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Morton, Pomeroy, Ross, Stewart, Sumner, Thayer, and Williams—20.

NOT VOTING—Messrs. Bayard, Cole, Nye, Wade, and Wilson—5.

So the amendment to the amendment was agreed to.

The CHIEF JUSTICE. The question recurs on the amendment as amended.

Mr. BUCKALEW. I move to amend further by adding at the end of the amendment the following words:

But the conclusion of the oral argument shall be by one manager, as provided in the twenty-first rule.

Mr. TRUMBULL. That would be so necessarily.

The amendment to the amendment was agreed to.

The CHIEF JUSTICE. The question recurs on the amendment of the senator from Missouri, [Mr. Henderson,] as amended on the motion of the senator from Illinois, [Mr. Trumbull.]

Mr. CAMERON. I riso to inquire whether a substitute would be in order now.

The CHIEF JUSTICE. An amendment to either proposition will be in order. Does the senator from Pennsylvania propose to offer an amendment?

Mr. CAMERON. Yes, sir, by way of substitute.

The CHIEF JUSTICE. It will be in order to move a substitute to strike out all after the word "that" in the amendment.

Mr. CAMERON. I send my amendment to the Chair.

The CHIEF CLERK. It is proposed to strike out all after the word "that" in the amendment as amended and to insert:

All the managers and all the counsel for the President be permitted to file written or printed arguments by 11 o'clock to-morrow.

Mr. EDMUNDS. Mr. President, I wish to inquire whether that is offered as a substitute for the original proposition or for the amendment.

The CHIEF JUSTICE. For the amendment.

Mr. EDMUNDS. Then I rise to a point of order, that it is not in order on account of our having voted that the amendment should stand as it is.

The CHIEF JUSTICE. The Chief Justice is of opinion that it is in order as an amendment The question is on the amendment proposed by the senator from Pennsylvania, [Mr. Cameron,] to strike out all after the word "that" in the amendment as amended, and insert what has been read.

Mr. HOWE. I move to lay the order and the amendment on the table.

The motion was not agreed to.

The CHIEF JUSTICE. The question recurs on the amendment proposed by the senator from Pennsylvania, [Mr Cameron.]

The amendment was rejected.

The CHIEF JUSTICE. The question recurs on the amendment of the senator from Missouri as amended on the motion of the senator from Illinois.

Mr. YATES. I move to strike out all after the word "that" and insert the following.

The CHIEF JUSTICE. The Secretary will read the amendment proposed by the senator from Illinois, [Mr. Yates.]

The chief clerk read the amendment, which was to strike out all after the word "that" and to insert:

Four of the managers and four of the counsel for the respondent be permitted to make printed or written or oral arguments, the managers to have the opening and closing.

Mr. YATES called for the yeas and nays, and they were ordered.

Mr. JOHNSON. I move to amend by inserting at the close "subject to the limitation in the 21st rule," as to the closing of the case, because otherwise all the managers might close.

The CHIEF JUSTICE. The amendment is not in order, unless it is accepted by the senator from Illinois. The senator from Maryland proposes to add "subject to the limitation in the 21st rule." Does the senator from Illinois accept the amendment?

Mr. YATES. Yes, sir.

Mr. ANTHONY. I ask unanimous consent to make an inquiry. Does not this order allow all four of the managers to reply after all four of the President's counsel have spoken?

Mr. JOHNSON. Not as it is now amended.

The CHIEF JUSTICE. The Chief Justice thinks it does not. The Secretary will read the amendment as it now stands.

The CHIEF CLERK. It is proposed to amend the amendment by triking out all after the word "that" and inserting.

Four of the managers and four of the counsel for the respondent be permitted to make printed or written or oral arguments, the managers to have the opening and closing, subject to the limitation of the 21st rule.

Mr. GRIMES. I call for the reading of the 21st rule.

The CHIEF JUSTICE. The Secretary will read the 21st rule.

The chief clerk read as follows:

XXI. The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, (unless otherwise ordered by the Senate upon application for that purpose,) and the argument shall be opened and closed on the part of the House of Representatives.

The CHIEF JUSTICE. The question is on the amendment proposed by the senator from Illinois [Mr. Yates] to the amendment as amended proposed by the senator from Missouri, [Mr. Henderson.] Upon this question the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas, 18; nays, 31; as follows:

YEAS—Messrs. Buckalew, Conkling, Corbett, Cragin, Davis, Doolittle, Fowler, Hendricks, Howard, McCreery, Morgan, Morton, Norton, Saulsbury, Sprague, Van Winkle, Vickers, and Yates—18.

NAYS—Messrs. Anthony, Bayard, Cameron, Cattell, Chandler, Dixon, Drake, Edmunds, Ferry, Fessenden, Frelinghuysen, Grimes, Harlan, Henderson, Howe, Johnson, Morrill of Maine, Morrill of Vermont, Patterson of Tennessee, Pomeroy, Ramscy, Ross, Sherman, Stewart, Sumner, Thayer, Tipton, Trumbull, Willey, Williams, and Wilson—31.

NOT VOTING—Messrs. Cole, Conness, Nye, Patterson of New Hamphire, and Wade—5.

So the amendment to the amendment was rejected.

The CHIEF JUSTICE. The question recurs on the amendment as amended.

Mr. FRELINGHUYSEN. I should like to hear the original proposition, as moved, I believe, by the senator from California, read.

Mr. HENDRICKS. Mr. President, I move to postpone the further consideration of this subject until the close of the first argument on the part of the managers. I think that argument ought to proceed.

The motion was not agreed to; there being, on a division—ayes, 19; noes, 22.

The CHIEF JUSTICE. The question recurs on the amendment of the senator from Missouri [Mr. Henderson] as amended on motion of the senator from Illinois [Mr. Trumbull] to the original proposition made by the senator from Maryland, [Mr. Vickers.] Both the original order and the proposed amendment will be read.

The CHIEF CLERK. The original order is as follows:

Ordered, That two of the managers on the part of the House be permitted to file their printed or written arguments on or before 11 o'clock to-morrow, and that after an oral opening by a manager and the reply of one of the President's counsel, another of the President's counsel shall have the privilege of filing a written or of making an oral address, to be followed by the closing speech of one of the President's counsel and the final reply of a manager under the existing rule.

The amendment as amended proposes to strike out all after the word "Ordered," and to insert:

That as many of the managers and of the counsel for the President as desire to do so be permitted to file arguments or to address the Senate orally, but the conclusion of the oral argument shall be by one manager, as provided in the 21st rule.

The CHIEF JUSTICE put the question on the amendment as amended, and declared himself at a loss to decide the result.

Mr. HOWARD called for the yeas and nays, and they were ordered; and being taken, resulted—yeas, 28; nays, 22; as follows:

YEAS—Messrs. Anthony, Conkling, Cragin, Davis, Dixon, Doolittle, Edmunds, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morrill of Maine, Morton, Norton, Patterson of Tennessee, Saulsbury, Sherman, Sprague, Tipton, Trumbull, Van Winkle, Vickers, Willey, and Yates—28.

NAYS—Messrs. Bayard, Buckalew, Cameron, Cattell, Chandler, Corbett, Drake, Frelinghuysen, Harlan, Howard, Howe, Morgan, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ramsey, Ross, Stewart, Sumner, Thayer, Williams, and Wilson—22.

NOT VOTING—Messrs. Cole, Conness, Nye, and Wade—4.

So the amendment as amended was agreed to.

The CHIEF JUSTICE. The question recurs on the order as amended.

Mr. EDMUNDS. I ask for the yeas and nays on that question.

The yeas and nays were ordered; and being taken, resulted—yeas, 28; nays, 22; as follows:

YEAS—Messrs. Anthony, Cragin, Davis, Doolittle, Ferry, Fessenden, Fowler, Grimes, Henderson, Hendricks, Johnson, McCreery, Morgan, Morrill of Maine, Morton, Norton, Patterson of Tennessee, Ramscy, Saulsbury, Sherman, Sumner, Tipton, Trumbull, Van Winkle, Vickers, Willey, Wilson, and Yates—28.

NAYS.—Messrs. Bayard, Buckalew, Cameron, Cattell, Chandler, Conkling, Corbett, Dixon, Drake, Edmunds, Frelinghuysen, Harlan, Howard, Howe, Morrill of Vermont, Patterson of New Hampshire, Pomeroy, Ross, Sprague, Stewart, Thayer, and Williams—22.

NOT VOTING.—Messrs. Cole, Conness, Nye, and Wade.—4.

So it was

Ordered, That as many of the managers as desire to do so be permitted to file arguments or to address the Senate orally; but the conclusion of the oral argument shall be by one manager, as provided in the twenty-first rule.

The CHIEF JUSTICE. Gentlemen managers on the part of the House of Representatives, you will please to proceed with the argument.

Hon. JOHN A. LOGAN, one of the managers of the impeachment on the part of the House of Representatives, thereupon, under the order just adopted by the Senate, filed the following argument:

Mr. President and Senators:

When one in public life is suddenly called to the discharge of a novel and important public duty, whose consequences will be great, and whose effects will be historical, he must betray an inordinate self-esteem, and an unpardonable lack of modesty, if he did not at the outset acknowledge his diffidence, and solicit forbearance.

And, sirs, more than any other man do I feel that it becomes me to invoke the charity and to ask the leniency of this honorable tribunal. For surely, never since the foundation of this government, has there been cast upon any of its servants a duty so high and important in its nature, so unusual and unexpected in its character, and so full of good or ill in its consequences, as the duty with which the managers on behalf of the people now find themselves charged, and one part of which I now reluctantly find myself called upon to perform. I shall be sustained throughout my effort by the consciousness that the cause I in part represent is too great to be weakened by my weakness, and by the sincere hope that, however feeble may be my efforts, and however apparent may be my imperfections, I shall not be accused of a want of fairness, or found lacking in concession and candor.

I wish to assure you, senators—I wish most earnestly and sincerely to assure the learned and honorable counsel for the defence, that we speak not only for ourselves but for the great body of the people when we say that we regret this occasion, and we regret the necessity which has devolved this duty upon us. Heretofore, sirs, it has been the pride of every American to point to the chief magistrate of his nation. It has been his boast that to that great office have always been brought the most pre-eminent purity, the most undoubted integrity, and the most unquestioned loyalty which the country could produce. However fierce might be the strife of party; however clamorous might be the cry of politics; however desperate might be the struggles of leaders and of factions, it has always been felt that the President of the United States was an administrator of the law in all its force and example, and would be a promoter of the welfare of his country in all its perils and adversities. Such have been the hopes and such has been the reliance of the people at large; and in consequence, the chief executive chair has come to assume in the hearts of Americans a form so sacred and a name so spotless that nothing impure could attach to the one, and nothing dishonorable could taint the other. To do aught, or to say aught which will disturb this cherished feeling, will be to destroy one of the dearest impressions to which our people cling.

And yet, sirs, this is our duty to-day. We are here to show that President Johnson, the man whom this country once honored, is unfitted for his place. We are here to show that in his person he has violated the honor and sanctity of his office. We are here to show that he usurped the power of his position and the emoluments of his patronage. We are here to show that he has not only wilfully violated the law, but has maliciously commanded its infringement. We are here to show that he has deliberately done those things which he ought not to have done, and that he has criminally left undone those things which he ought to have done.

He has betrayed his countrymen, that he might perpetuate his power, and has sacrificed their interests, that he might swell his authority. He has made

the good of the people subordinate to his ambition, and the harmony of the community second to his desires. He has stood in the way which would have led the dismembered States back to prosperity and peace, and has instigated them to the path which led to discord and to strife. He has obstructed acts which were intended to heal, and has counselled the course which was intended to separate. The differences which he might have reconciled by his voice, he has stimulated by his example. The questions which might have been amicably settled by his acquiescence, have been aggravated by his insolence; and in all those instances whereof in our articles we complain, he has made his prerogatives a burden to the commonwealth, instead of a blessing to his constituents.

And it is not alone that in his public course he has been shameless and guilty, but that his private conduct has been incendiary and malignant. It is not only that he has notoriously broken the law, but that he has criminally scoffed at the framers of the law. By public harangue and by political arts he has sought to cast odium upon Congress and to insure credit for himself; and thus, in a government where equal respect and dignity should be observed in reference to the power and authority conferred upon each of its several departments, he has attempted to subvert their just proportions and to arrogate to himself their respective jurisdictions. It is for these things, senators, that to-day he stands impeached; and it is because of these that the people have bid us prosecute. That we regret it, I have said; that they regret it, I repeat; and though it tears away the beautiful belief with which, like a drapery, they had invested the altar, yet they feel that the time has come when they must expose and expel the sacriligious priest, in order to protect and preserve the purity of the temple.

Yes, senators, Andrew Johnson, President of the United States, now stands arraigned at this bar to answer to the high crimes and misdemeanors which an indignant and outraged people have at length alleged against him. This trial has given us many surprises, but no one fact has given us more surprise than the tone of complaint, which, by his counsel, he has assumed. Of what should he complain? Did he think that he could proceed in his unwarrantable course forever with impunity? Did he suppose that he could break down every rule and safeguard in the land, and that none should say him nay? Did he believe that because the people were for a time stricken into silence by the audacity of his acts, they would suffer in sadness and continue to be dumb? Did he not know that they were jealous of their liberties and rights, and in the end would punish him who attempted to tamper with either; and now that they are visiting upon him the inevitable result of his misdeeds, is it of this that he complains? He should rather give them thanks that they have spared him so long, and be grateful that their magnanimity has preserved him to this hour. Is it of the articles alleged against him that he complains? Sirs, the people have selected the latest but not the greatest instance of his dereliction. They hesitated, in the first instance, to think that the actions which they knew were insidious were intended to be revolutionary. They preferred to attribute to the frailty of his mind what they should have ascribed to the duplicity of his heart; and when, day after day, the evidences of his falsehood became stronger and stronger; when month after month the baseness of his purpose became more and more palpable, and when session after session the proof of his desertion became more and more convincing, still they hesitated, until further hesitation as to him would have been certain destruction to them, and they presented through us, not his most flagrant offences, but only his last offendings. Should he complain that they denounce for the lesser, when he is equally guilty of the greater crimes? Is it of this tribunal that he complains? You, Mr. President, preside, and most worthily preside, over the Supreme Court, which is the court of last resort in all this land. To you and your associates is left the final arbitrament of the most grave and important controversies which concern our people. By your education and habit you are

fitted to pass upon serious issues. You are raised by your jurisdiction above the ordinary passions and prejudices of the lesser courts; and this of itself is a guaranty of your impartiality in a forum like this. And you, senators, by the theory and structure of our government are constituted its most select and responsible legislators. By the arrangement and disposition of the functions of our federal powers, you occupy a sphere the exact parallel to which is found in no other government of the world. You are of the President; and yet so far separated from him that you are beyond his flatteries and above his threats. You are of the people; and yet so far removed from them that you are not affected by their local excitements, you are not swayed by their passions nor influenced by their tumults. When the Constitution fixed the age of eligibility to the Senate, it was that your minds should be matured and that your judgments should be ripened; it was that you should have come to that period when reason is not obscured by passion, and wisdom is gathered of experience. To such an august body have the people committed their grievances; and of this he certainly should not complain. Does he complain of us? Sirs, it may be that he does; but yet I feel that he should not. What we have done, we have done promptly, but none the less reluctantly. We felt, as citizens, the irresistible conviction that this man was false to every citizen; and we felt, as managers, that we did not dare to jeopardize, by unseemly delay or fatal favors, the safety of a nation. We thought

"If it were done, when 'tis done, then 'twere well it were done quickly."

There had been too much dallying with treason already. If but a few short years ago traitors had been quickly seized and speedily punished, there would never have been a shot fired in rebellion. If plotters had been made to feel the early gripe of the law, there never would have been a resort to arms. When we looked back and recalled the memories of our battle-fields—when we saw the carnage amid the slain, the unutterable woe of the wounded—when we remembered the shriek of the widow, and the sob of the orphan—when we reflected on the devastation of our land, and the burdens now on our people—when we turned us about and saw in every direction the miseries and the mischiefs which follow every war, no matter how just, and when we reminded ourselves that all this would not have been, had treason been executed for its overt acts before yet its hands were red; and when we felt, as we do all feel, that to delay might bring all this and more again upon us, we could not and did not pause. We urged this trial at "railroad speed." In view of such results, self-preservation would have dictated that we should ask for "lightning speed." Ought he to complain? If he is guilty, then there is no speed too great for his deserts. If he is innocent, there is none too great for his deliverance. It is the fact, then, that we have desired to advance this case with all possible speed; but it is not the fact that we have advanced with all possible rigor. We only desired to be just; we did not wish to be severe. If we had been actuated by any spirit other than a sense of our high duty, we might have given the President cause to complain. We might have asked, and asked it in the strength of authority, too, that pending the trial he should have been placed under arrest, or at least suspended from his office. The English practice would have sanctioned this. May, in his treatise on the law, privilege, &c., of Parliament, says:

If the accused be a peer he is attached or retained in custody by order of the House of Lords; if a commoner, he is taken into custody by the sergeant-at-arms attending the Commons, by whom he is delivered to the gentleman usher of the black rod, in whose custody he remains until he is admitted to bail by the House of Lords, or otherwise disposed of by their order. (Chapter 23.)

In Wooddison, we find it was customary for the Commons to request the Lords that the person impeached "may be sequestered from his seat in Parliament, or be committed, or that the peers will take order for his appearance according as the degree of the imputation justifies more or less severity." The Com-

mons demanded that Clarendon be sequestered from Parliament and committed (6 Howell's State Trials, 395; 11 Howell, 733.)

Lord Stafford was sequestered in 1641. (2 Nalson's Collections, 7.)

In the matter of the impeachment of Blount, it was ordered by the Senate as follows, July 7, 1797:

That the said William Blount be taken into the custody of the messenger of this house until he shall enter into recognizance, himself in the sum of $20,000, with two sufficient sureties in the sum of $15,000 each, to appear and answer such articles of impeachment as may be exhibited against him.

On the 18th day of June, 1788, in the Virginia convention, George Mason objected to the pardoning power vested in the President for ordinary crimes. Mr. Madison in reply said: "There is one security in this case to which gentlemen may not not have adverted; if the President be connected in any suspicious manner with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they (evidently referring to the Senate, or the Senate in connection with the House) can remove him if found guilty; *they can suspend him when suspected*, and the power will devolve upon the Vice-President."

Therefore, as we have not asked what we might have so consistently demanded, I feel that he has no ground of discontent with us. What, then, is he to answer? He is to make defence to the charge of high crimes and misdemeanors which the people of the United States, in virtue of their sovereignty, do proclaim against him. I wish to be distinctly understood, when I say that the allegation comes from the people in their sovereignty—in their supreme capacity as the rulers of us all. By remembering this, we may escape from the narrow confines of legal technicalities, and be governed by more extended and liberal rules than prevail in the courts of the common law. It shall not be truthfully said that the charges which come from a whole people are frivolous and vain; it shall not longer be claimed that that which a community in its aggregate capacity asserts is insufficient and of no avail; the mighty mass of men who are the nation—the great unit of minds who are this Union—of minds enlightened, of thoughts profound, of discrimination quick, and purpose steady, of hearts free, of souls resolved, of all the elements which make this nation what it is—a nation young in years, but mature in action. The murmur of this nation is mighty, and its accusations cannot be ignored. Here, at least, it may be said: "*Vox populi vox Dei*"—"the voice of the people is the voice of God." It is for this reason that neither a demurrer to test any questions of law, or a motion to quash, to decide any questions of fact, have ever been permitted to be interposed against any article of impeachment, no matter wherever or whenever such have been presented. And yet, before issue joined upon the present occasion, it was asseverated against those who favored this proceeding that they were about to pervert the Constitution, to submerge the law, and further their partisan ambitions by the proclamation of charges, which on their face are fabulous and weak, if not absurd and contumacious; and in the answer which this respondent has made he has announced, as one of the issues upon which you are to pass, that several of our articles are insufficient in law, and inadequate in fact. I repeat, sirs, that this is an anomalous answer. The fiat of a people when solemnly pronounced against one to whom they have delegated official favors, and whom they have charged with derelictions of official duty, can never be treated as an empty sound, nor their inquiry regarded as an idle ceremony. And here I wish to impress upon these triers the important fact, that every article which we here present stands in the light of a separate count in an indictment, and must be decided as a separate issue on its own merits. It should not be permitted, where any count is found to contain matter of substance, that the accused should have a verdict of not guilty, because of insufficiency in matters of form.

It is the rule that all questions of law or of fact are to be decided, in these proceedings, by the final vote upon the guilt or innocence of the accused. It is also the rule, that in determining this general issue senators must consider the sufficiency or insufficiency in law or in fact of every article of accusation. But the insufficiency which they are to consider is not the technical insufficiency by which indictments are measured. No mere insufficiency of statement—no mere want of precision—no mere lack of relative averments—no mere absence of legal verbiage, can inure to the benefit of the accused. The insufficiency which will avail him must be such an entire want of substance as takes all soul and body from the charge and leaves it nothing but a shadow. Neither shall the respondent be allowed to escape because of any immaterial variance between the averment and the proof. If we have succeeded in sustaining the principal weight of each separate article, then we are entitled to a finding upon each. These are the propositions, which I gather from the following authorities: Trial of Judge Peck, page 232, (Mr. Wirt, counsel for respondent;) Mr. Webster, in the trial of Judge Prescott, page 25; Mr. Shaw, in the same case, page 45; Report from the committee of the House of Commons appointed to inspect the Lords Journals, April 30, 1794.

Story on the Constitution says:

It is obvious that the strictness of the forms of proceeding in cases of offences at common law, are ill-adapted to impeachments. The very habits growing out of judicial employments, the rigid manner in which the discretion of judges is limited and fenced in on all sides in order to protect persons accused of crimes, by rules and precedents, and the adherence to technical principles which, perhaps, distinguishes this branch of the law more than any other, are all ill-adapted to the trial of political offences in the broad course of impeachments. * * * * There is little technical in the mode of proceeding; the charges are sufficiently clear, and yet, in a general form, there are few exceptions which arise in the application of evidence, which grow out of mere technical rules and quibbles; and it has repeatedly been seen that the functions have been better understood, and more liberally and justly expounded by statesmen than by mere lawyers. An illustrious instance of this sort is upon record in the case of the trial of Warren Hastings, where the question whether an impeachment was abated by a dissolution of Parliament, was decided in the negative by the House of Lords, as well as the House of Commons, against what seemed to be the weight of professional opinion. (Story, sec. 762, 763.)

WHAT ARE IMPEACHABLE OFFENCES?

The next question which it is proper to ask is, For what crimes and misdemeanors may an officer be impeached? Can he be impeached for any other than an indictable offence? The authorities certainly sustain the managers in asserting that he may be. We cannot search through all the cases, as they are too numerous, but will call the attention of the Senate to some that should be regarded as good authority, and the opinions of those who should be regarded as learned in the law.

Mr. Madison, in discussing the power of the President, used the following language:

What will be the motives which the President can feel for the abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by this house before the Senate for such an act of mal-administration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust. (Annals of Congress, 1804–'5, vol. i, page 517.)

The trial of Blount, 1788–'89. Story, in speaking of that case, says:

In the argument upon Blount's impeachment, it was pressed with great earnestness that there is not a syllable in the Constitution which confines impeachment to official acts, and it is against the plainest dictates of common sense that such a restraint should be imposed. (Story, sec. 802.)

Trial of Judge Chase, February 26, 1805. Mr. Manager Nicholson says:

If, therefore, the President of the United States should accept a bribe, he certainly cannot be indicted for it, and yet no man can doubt that he might be impeached. If one of the heads of departments should undertake to recommend to office for pay, he certainly might be

impeached for it, and yet I would ask under what law and in what court could he be indicted. (Judge Chase's Trial, page 564.)

In the trial of Judge Chase, Mr. Manager Randolph says:

It has been contended that an offence to he impeachahle must be indictable. For what, then, I pray you, was it that this provision of impeachment found its way into the Constitution. * * * If the Constitution did not contemplate a distinction hetween an impeachable and an indictable offence, whence this cumbrous and expensive process, which has cost us so much labor and so much anxicty to the nation? Whence this idle parade—this wanton waste of time and treasure—when the ready intervention of a court and jury alone was wanting to rectify the evil? (Annals of Congress, 1804–'5, page 642.)

By permission of the senators I will read some extracts that I have made from the speeches of some of the most learned men of England on this same question, which was discussed in the trial of Queen Caroline in the year 1820.

Earl Grey, in speaking of the powers of Parliament, said:

He must maintain this principle, supported on the ground of parliamentary law, and bottomed on the constitution of the country, that on all occasions, when a great state necessity or a matter of great state expediency exists, Parliament were vested with extraordinary powers, and it hecame their duty to exercise those extraordinary powers in order to procure that remedy commensurate with such state necessity or expediency, which no proceeding in a court of law could effect. (1st vol. p. 8, Trial Queen Caroline.)

In the same case, Brougham (since made a lord) said:

Impeachment was a remedy for cases not cognizable by the ordinary jurisdiction. * * The House of Commons might impeach for whatever was indictable, but they also might impeach in cases where no indictment could be found. He submitted, therefore, that some satisfactory reason ought to be stated why impeachment was not resorted to in this instance. (Vol. 1, p. 22.)

Again, he says:

The learned attorney general had held that no impeachment could lie unless some law was violated; but the opinion was contrary to the doctrine laid down hy the greatest writers on the law of impeachment. Lord Coke did not so limit the power of Parliament. He regarded this power as most extensive, and in describing it quoted this remarkable expression: "That it was so large and capacious that he could not place bounds, to it either in space or time." In short, this maxim has been laid down as irrefragahle, that whatever mischief is done, and no remedy could otherwise be obtained, it is competent for Parliament to impeach. * * * Why was impeachment competent in the case of the misdemeanor of a puhlic functionary? Expressly because no remedy was to be found hy any other means; because an act had been committed which justice required should be punished, but which could only be reached by Parliament. * * * * * * *

It happened that the very first impeachment which occurred in the history of Parliament was one which neither related to a public officer nor to any offence known to the law. It was the case of Richard Lyons and others, who were complained of for removing the staple of wool to Paris, for lending money to the king on usurious contracts. The statute against usury had not then been passed, and there were various other charges against the parties which formed no legal offence. The case was one in which merchants were, among other things, charged with compounding duties with the king for a small percentage.

Also the "case of Sir Giles Mompessen, for the sale of patents." This was not an indictable offence, and is the more remarkable from being recorded in "Coke's Institutes." Hence, we find that in the very inception of trials of impeachment no indictable offence need have been committed.

Again, we find Mr. Brougham stating:

"That the house would exercise the right of impeachment, not because the offence was liable to a five pounds penalty—not because it was indictable, but because some evil had heen committed which the ordinary courts of law could not reach. This he conceived was the only constitutional principle upon which impeachment rested. * * * The case of Mr. Hastings illustrates his argument, for of the articles of impeachment preferred againsnt him, four out of five were for offences of a nature of which no court of law could take cognizance. (Vol. 1, pp. 62 and 63.)

I again call attention to the arguments and opinions of learned men of our own country, which most clearly sustain our view on the point now under discussion.

On the trial of Judge Peck, Mr. Manager Buchanan says:

A gross abuse of granted power, and an usurpation of power not granted, are offences equally worthy of and liable to impeachment. (Page 428.)

In the same case, Mr. Manager Wickliffe's remarks are so applicable to the conduct of the respondent that I may be pardoned for giving them in this connection. He says:

Take the case of the President of the United States. Suppose him base enough—or foolish enough, if you please—to refuse his sanction to any and every act which Congress may pass. This is a power which, according to the Constitution, he can exercise. Will it be contended that he could be indicted for it as a misdemeanor in any court, state or federal? Yet, where is the man who would hesitate to remove him from office by impeachment? (Peck's Trial, 1831, page 309.)

In the same case, Mr. Wirt, of counsel for the respondent, said:

(Constitution, art. 2, sec. 4.) "The President, Vice-President, and all civil officers shall be removed from office on impeachment for, and on conviction of, treason, bribery, or other high crimes or misdemeanors." The Constitution itself defines treason, but it does not define bribery, nor does it define those other high crimes and misdemeanors for which these officers may be impeached and removed. Now, what does the Constitution mean by the expression high crimes and misdemeanors? It has a meaning; what is it? and where are you to look for it? The phrase is obviously borrowed from the common law; this instrument thus, by its own terms, connects itself, in this instance, with the common law, and authorizes you to go to that law for an explanation of its meaning. In the very proceeding, therefore, in which you are now engaged, the common law is in force for the definition of the high crime or misdemeanor which you are called on to punish. (Peck's Trial, pp. 498 and 499.)

Mr. Story, in discussing what are the functions to be performed in impeachments, says:

The offences to which the power of impeachment has been and is ordinarily applied as a remedy, are of a political character, * * * * what are aptly termed political offences, growing out of personal misconduct or gross neglect, or usurpations, or habitual disregard of the public interests, in the discharge of duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged of by the habits, and rules, and principles of diplomacy, of departmental operations and arrangements; in short, by a great variety of circumstances, as well those which aggravate as those which extenuate or justify the offensive acts; which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence. * * * * * * (Story on Const., see 762.)

Treason is defined in the Constitution itself; bribery is defined by common law; and Mr. Story, in discussing the definition of impeachable crimes, says:

The only practical question is, What are deemed high crimes and misdemeanors? Now, neither the Constitution nor any statute of the United States has in any manner defined any crimes except treason and bribery to be high crimes and misdemeanors, and as such impeachable. In what manner, then, are they to be ascertained? Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative declaration and enumeration of the offences which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity; and the party is wholly dispunishable, however enormous may be his corruption or criminality. (Story's Com., Sec. 794.)

In further reasoning upon the same subject, he says:

There are many offences, purely political, which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute books. And, indeed, political offences are of so various and complex a character, so utterly incapable of being defined or classified, that the task of positive legislation would be impracticable, if not almost absurd to attempt it. * * * The only safe guide, in such cases, must be the common law, which is the guardian at once of private rights and public liberties; and however much it may fall in with the political theories of certain statesmen and jurists, to deny the existence of a common law belonging to and applicable to the nation in ordinary cases, no one yet has been bold enough to assert that the power of impeachment is limited to offences positively defined in the statute book of the Union as impeachable high crimes and misdemeanors. (Sec. 798.)

Also same authority:

In examining the parliamentary history of impeachments, it will be found that many offences not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanors, worthy of this extraordinary remedy. Thus lord chancellors and judges and other magistrates have not only been impeached for bribery, and

acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws, and introduce arbitrary power. So, where a lord chancellor bas been thought to have put the great seal to an ignominious treaty; a lord admiral to have neglected the safeguard of the sea; an ambassador to have betrayed his trust; a privy counsellor to have propounded or supported pernicious and dishonorable measures; or a confidential adviser of his sovereign to bave obtained exorbitant grants, or incompatible employments—these have been all deemed impeachable offences. (Story's Com., book 3, chap. 10, sec. 798.)

Mr. Story, after his examination of impeachment trials in England and the few cases in this country, came to the following conclusion in regard to the rule applicable to trials of impeachment before the Senate of the United States:

Congress have unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct, and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly promulgated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanor. (Story's Com., book 3, chapter 10, section 797.)

Although we have shown that both English and American authorities sustain us in the position that an offence need not be punishable or indictable by statute law to be an impeachable offence, yet we are told that British precedent should not influence the case, because they hold the ministers of the Crown accountable for the honesty, legality, and utility of measures proposed by them, and punishable by impeachment for failure in any of these particulars; yet that construction of the law of impeachable offences has obtained because Parliament in Great Britain is substantially omnipotent: they may pass *ex post facto*, retroactive laws, bills of attainder, and even change the constitution itself; therefore, that, when the Commons present any officer of the government for any claimed offence, it is not to be considered whether it is made so by any pre-existing laws; because, if the Commons impeach and the Peers adjudge the party presented guilty, the joint action of the two houses would only be, in effect, to declare the act complained of to be noxious or injurious, although not so enacted by any previous legislation, and that this would be within their clear right. But that our Constitution, by prohibiting the passage of any retroactive or *ex post facto* law, or any bill of attainder, has limited impeachment for high crimes and misdemeanors to those acts only which have been declared to be such crimes and misdemeanors by pre-existing laws; and, therefore, in this country, whatever might be the case in England, impeachment must be limited to such offences only as are so made by statute, or at common law. There is force and speciousness, to say no more, in this view, and it deserves a careful and candid consideration.

The weight of the argument is derived from the suggestion that the judgment following impeachment is in truth a punishment of crime: that failing, the argument fails. True it is, our Constitution forbids the passage of any retroactive or *ex post facto* law, or bill of attainder, as a punishment for crime; but it is equally true that it says that "judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law." Thus it appears that the judgment of impeachment is not a punishment for crimes nor misdemeanors, but extends only to removal from office or disqualification to hold office, leaving the party (if a crime is committed) to be punished therefor by other provisions of law, which shall neither be retroactive, *ex post facto*, nor in the nature of a bill of attainder.

This provision would seem, therefore, to make it clear that impeachment is *not* a punishment for crime. True, an officer may be impeached for a crime, technically, either by common or statute law, but he cannot be punished therefor as a part

of the judgment of impeachment. He can only be removed from office, and his punishment, if any, is left to the ordinary courts. We are led to consider, therefore, whether, in the language of the Constitution and laws of the United States, the term "removal from office" is anywhere used as the penalty for a crime. Of course that phrase must have the same construction, whether found in the Constitution, which is paramount law only, or in the statutes enacted in conformity with the Constitution, which are equally laws of the United States.

Now, it is admitted by all sides that any officer may be removed under our laws for any reason, no reason, or for political reasons simply, the contest between the Executive and Congress being as to the person or body by whom such removal shall be exercised—whether by the President alone, or by the President and Senate in concurrence, or whether such right of removal may be restrained by legislation.

This power of removal by somebody is recognized in a variety of statutes, but nowhere as the penalty for crime. The phrase "removal from office" appears only once in the Constitution. Must it not, therefore, have the same meaning and construction there as it does in the other laws of the United States? Is not this construction of the phrase "removal from office" made certain by the uniform legislation and practice of the government? And as the phrase "removal from office" is only found in the Constitution as the consequence of conviction upon impeachment, the judgment of which can extend no further than such removal or disqualification for office, is it not equally certain that such judgment is not a punishment for crime, and, therefore, that an officer may be removed by impeachment for political reasons, as he may be for the same reasons by any department of the government in which the right of removal is vested?

Is not this view of the constitutional provision strengthened by this consideration—that by the theory of and practice under the Constitution, every officer, other than the President and Vice-President, may be, and in practice is, removable by the power that appointed him at pleasure; or, in other words, when the service of the government, in the judgment of the appointing power, seems to make such removal necessary and proper? Is it not, therefore, more consonant with the theory of the Constitution to hold that the President may be removed from office by presentment of the House, who represent in his case the people who appointed him, if the reasons for the removal shall be found sufficient by two-thirds of the Senate, who, by the Constitution, are to adjudicate thereupon? Can we not illustrate this by supposing a case of inability in the President to perform the duties of his office because of his insanity? Now, insanity is not a crime, but every act of an insane man might, and almost necessarily would, be a misdemeanor in office.

Is the phrase "misdemeanor in office" any more than the Norman French translation of the English word misbehavior? Judges are to hold office during good behavior. Is not that equivalent to saying they hold office during good demeanor, *i. e.*, while they demean themselves well in office? Are not both phrases the equivalent of the Latin one "*dum se bene gesserit?*"

How is an insane president or an insane judge to be removed under our Constitution? Clearly, not until his insanity is ascertained. By whom is that to be ascertained? The Constitution makes no provision, save by presentment by the House, and adjudication by the Senate. And it is remarkable, as sustaining this argument, that the first case of impeachment of a judge under our Constitution, Judge Pickering's, was of an insane man, as the defence allege, and clearly made out by evidence. Judge Pickering was removed, the defence of insanity apparently not being considered by the Senate. Is it not clear that the process of impeachment, under the English constitution, being a mode of punishment of all crimes, as well as a method by which an officer whose official or personal conduct was hurtful to the state might be removed, that our Constitution limiting the form of impeachment to removal, only takes away from it

its punitive element which it vests in the ordinary courts of law alone; thus leaving the process of impeachment an inquisition of office for any act of the officer or cause which the House of Representatives might present as, and the Senate adjudicate to be hurtful to the state or injurious to the common weal.

Will any one say that if the President should veto every bill that should pass the Congress, (and there not be a two-thirds vote against his veto,) and thereby defeat all appropriations, so as to completely block the wheels of government, that he could not be impeached for an improper use of said power, although he is authorized by the Constitution to use such power? Here would be a case wherein the exercise of lawful power was done in such a way as to become so oppressive and obviously wrong that there must be a remedy, and impeachment would be the only one.

DEFINITION OF CRIMES AND MISDEMEANORS.

Having thus shown that a party can be impeached for offences not punishable by statute law, it behooves us next to inquire what have been the definitions of crimes and misdemeanors as used by writers of acknowledged authority. It is by the light of these definitions that we are to inquire and determine what culpability, if any, attaches to each and all of the acts by the President of which we complain, and how far he may palliate or justify the act after having admitted its performance. These which I shall read are but few among the many authoritative definitions of crimes and misdemeanors.

What is a crime? Blackstone defines a crime or misdemeanor as being—

An act committed or omitted in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms; though in common usage the word crimes is made to denote such offences as are of deeper and more atrocious dye; while smaller faults and omissions of less consequence, are comprised under the gentler name of misdemeanors only. (Blackstone's Commentaries, book 4, page 5.)

The distinction of public wrongs from private crimes, and misdemeanors from civil injuries, seems principally to consist in this: That private wrongs or civil injuries are an infringement or privation of the civil rights which belong to individuals merely as individuals; public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community considered as a community in its social aggregate capacity. (Blackstone's Commentaries, book 4, page 5.)

When the words high crimes and misdemeanors are used in prosecutions by impeachment, the words high crimes and misdemeanors have no definite signification, but are used merely to give greater solemnity to the charge.—Sentence from a note to Blackstone's Commentaries, (5 Christian.)

Or, to state it stronger even than Blackstone does, that the defendant may have the benefit of it, a crime or misdemeanor is the violation of a public law where there shall be a joint operation of act and intention in the perpetration of the act.

Mr. Blake, in discussing Prescott's case, defines a misdemeanor perhaps better than I have heretofore stated it, I will therefore give his definition:

To misconduct is to misbehave; to misbehave is to misdemean; to misdemean is to be guilty of a misdemeanor—nothing more—nothing less. The term is technical, signifying a crime; hence it follows as a conclusion from these premises that misconduct or misbehavior, in its legal interpretation, can signify nothing less.

INTENTION—HOW DETERMINED.

When the unlawful act is shown, how, then, do we gather the intention? It can only be done from all the circumstances surrounding the commission of the act.

I believe it is a rule, both in law and morals, that every man is presumed to

intend the natural and probable consequences of his own act. A good motive never accompanies a bad act, nor a bad one a good act.

Mr. Buchanan, in the trial of Judge Peck, states this proposition so clearly that I will adopt his language (with his quotations:) "'Out of the abundance of the heart the mouth speaketh,' 'The tree is known by the fruit,' are axioms which we have derived from the fountain of all truth. Actions speak louder than words, and it is from the criminal actions the judges must infer the criminal intention." * * * Speaking of the respondent, Peck, he says: "If he shall, in an arbitrary manner, and without the authority of law, imprison a citizen of this country, and thus consign him to infamy, are you not to infer his intention from the act? Is not the act itself the best source from which to draw the inference? Must we, without any evidence, in the spirit of false charity and mercy, ramble out of the record to imagine a good motive for this bad conduct? Such rule of decision would defeat the execution of all human laws. No man can doubt but that many a traitor during the American Revolution believed in his conscience that he owed allegiance to the King of Great Britain, and would violate his duty to God if he should lend the least aid in the cause of freedom. But if such a man had committed treasonable acts, will any person say he was not guilty of treason, because in his secret heart he *might* have had a good intention? Does a poor, hungry, naked wretch filch from my pocket a single dollar to satisfy the cravings of appetite, the law infers a felonious intent, and he must be convicted and punished as a thief, though he may have had no other purpose but that of saving himself and his children from starvation. And shall a man who has been selected to fill a high judicial position on account of his knowledge of the laws of the land, be permitted to come before the Senate and say: 'It is very true that I *did* against law imprison an American citizen and deprive him for eighteen (18) months of practising that profession by which he lived; it is true that I violated the Constitution of the United States by inflicting on him unusual punishment, but I did not know any better; I had a good intention.'"

And, Mr. President, in the case at bar are we to be told that this violation of law carries with it no bad motive? that the law was broken merely to test its strength? Is a man to be permitted to break a law under the pretence of testing its constitutionality? Are the opinions of a man against the soundness of a law, to shield him from punishment for the violation of said law? If so, the opinion of the criminal becomes the rule by which you are to try him, instead of the law which he has broken. If this doctrine be established, every traitor in the land will find a complete justification for his many crimes against the government of the United States, in this, that he believed that secession was no violation of the Constitution. Doubtless every robber and murderer has some reason by which he justifies himself, in his own mind, for the commission of his crimes. But is that a justification or excuse in law? Had Booth (the assassin) been captured alive, doubtless on his trial he would have said that he thought he was doing no wrong in murdering the President, could he thereby have advanced the interests of his friends in the south, and would have also stated, no doubt, that he was advised by his friends to commit the act. And the accused claims the same as an excuse for his conduct. He claims that he was advised by his ministers at the heads of the different branches of the executive department. But, sir, in neither case can such an excuse be considered as in the least manner forming any justification or excuse in law. This plea, answer, or excuse pleaded, if believed by the President and his learned counsel as being any excuse whatever for his violations of law, we may here get some clue to the hesitancy in the trial of Jefferson Davis, the great criminal of the rebellion, (inasmuch as he certainly believed he was doing no wrong in breaking the law, as his opinion was that he was maintaining a great principle.) As the counsel, or a part of them, who now defend the President on this principle, must

prosecute Jeff. Davis against this principle, it would seem that, by adopting this theory, they will succeed in releasing both instead of convicting either.

Sirs, adopt this new theory, and you thereby unhinge the law, open wide the prison gates, and give safe conduct to every criminal in the land, no matter how high or low his position, or how grave or small his offences.

Having thus shown what are impeachable offences, the definition of crimes and misdemeanors, and how we are to gather the intention of the accused in the violation of a law, it becomes necessary to examine somewhat the basis of the justification stated by the defendant for his action.

RESPONDENT'S DEFENCE TO FIRST TWO CHARGES.

The respondent admits the facts upon which the first charge rest, but denies that they constitute an offence for which he is answerable to this Senate, sitting as a court of impeachment. This denial involves two inquiries:

1. HAD THE PRESIDENT THE POWER TO REMOVE THE SECRETARY OF WAR UNDER THE CIRCUMSTANCES, BY VIRTUE OF THE CONSTITUTION AND THE LAWS AS THEY STOOD PRIOR TO THE PASSAGE OF THE TENURE-OF-OFFICE ACT?

2 HAD HE THE RIGHT TO REMOVE THAT OFFICER UNDER THE TENURE-OF-OFFICE ACT?

It must be conceded that a negative answer to either of these propositions is equivalent to a verdict of guilty. The respondent has stated his defence upon the highest possible grounds, and it is of the first importance that his reasons be put to the severest test, for they underlie the whole network of our admirable system of government. The question here involved was crowded into the smallest compass by the respondent's distinguished premier, on a memorable occasion, when he put to a gaping multitude, heated by the inflammatory speech of this respondent, this question: "Will you have Andrew Johnson President or King?"

Sir, it was gratuitious in this respondent to attempt to purge himself by his answer of an intent to violate the Constitution and laws of the land. His answer stands upon a right which he claims began with his high office, and has clung to the President as an undisputed prerogative since the days of Washington by virtue of the Constitution. If he is right, the motive, whether good or bad, cannot make him answerable; if he was wrong, the motive follows. The innocent violation of a law is not supposable. If there was in this action of the President the exercise of a rightful power, he must be acquitted of this charge; if he acted outside and in violation of law, he must be convicted, whatever his motive. Let us, then, examine the two inquiries suggested:

Sirs, I think there exists a widespread and dangerous misapprehension as to the powers and prerogatives of the President. We have been in the habit of speaking of three co-ordinate branches of government in such connection and in such manner as to imply that each possesses coequal power with the other. One of the transcendently valuable results of the late war has been the fixing the powers of our three branches of government where they properly belong, the resolving of hitherto blended powers into the original elements of government. The rebellion was a war of encroachments upon the rights of the people. The people triumphed, and they now insist that the victory shall not be a barren one.

I hold that the President of the United States possesses no power other than that given him by the Constitution and the laws; and I mean by this that there are no *inherent* powers in the Executive, no *reserved* authority, no *implied* prerogatives other than those which are necessarily dependent upon and derivable from the expressed constitutional provisions and the laws.

With the evils of a monarchy so fresh in their memory, the framers of the Constitution sought to surround the President with such checks as to make him a mere *executive officer*—the *servant* of the people. His powers were specifically defined, and confined to the narrowest compass; except the high honor of receiving embassies as the representative of the government, he was stripped of all

attributes of sovereignty; he was given no jurisdiction over the legislative or judicial branches, but on the contrary was made amenable to the former for his unofficial as well as official conduct; he can create no office, and his appointing power is only conditional; he is unable to declare war, or alone make treaties; his authority is mainly *negative*, confined chiefly to offering suggestions to Congress, granting pardons and reprieves, to concluding treaties and appointing ambassadors and other public officers "by and with the advice and consent of the Senate." He is the executive *only*, and "*shall* take care that *the laws* be faithfully executed." He is without the least judicial attribute, and Mr. Kent says:

When laws are duly made and promulgated they only remain to be executed. No discretion is submitted to the executive officer. It is not for him to deliberate and decide upon the expediency of the law. *What has been once declared to be law under all the cautious forms of deliberation prescribed by the Constitution ought to receive prompt obedience.* (Kent's Commentaries, vol. 1, page 291.)

To the legislative is given the power of supervising the Executive's acts, and to remove him from office for "high crimes and misdemeanors." At the time of the formation of our government so jealous were the people of their rights, and so fearful lest the President might assume undue authority and obtain the power of a monarch, that it was only by the most strenuous exertions of the friends of the proposed Constitution, in triumphantly showing that this power of removal made him subservient to Congress, that the public mind became reconciled, and the Constitution was finally accepted by the people. They seemed even then to well understand their rights. The great danger attending the appointing power was perceived. Then, as now, the people feared the enormous patronage of the Executive if left unrestricted, and they appreciated the fact so patent to-day, that lust for power would be likely to corrupt officials and cause them to

> —— Crook the pregnant hinges of the knee,
> Where thrift might follow fawning.

Hence, as was thought, "effective measures of keeping officials virtuous whilst they continue to hold their public trusts" were interposed by making the appointing power a dependency upon the Senate. However we may guard this power, it will ever be liable to be made a source of corruption. Office will be the bribe held out by unprincipled Executives; and at all times there will be found men base enough to accept that bribe. This evil is unavoidable, and to save the nation, as far as possible, from this curse, is appointment made a joint power. The second clause of section 2, Article II, of the Constitution, says:

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for.

No shadow of authority is here given to the President alone to appoint any officer whatever, not even the most inferior, except as invested with power by Congress; on the contrary, it is made a joint act of the President *and Senate*. And why was this made a joint power? In order to protect public interests, to prevent a vicious Executive from displacing faithful officers and supplanting them with his own tools and confederates; to prevent the consummation of just such a conspiracy as was conceived by the respondent to obtain possession of all departments of government, and to use the power thus obtained against the people, even if it involved another great national strife and appeal to arms. But whatever may have been the reasons which led to this being made a co-operative power of the President and Senate, the *fact* that it is thus made stands uncontroverted, and cannot be explained away. Words have lost their meaning if other construction be put upon it. I

wish, however, to direct attention to the remarkable connection of the appointing with another, the treaty-making power. Manifestly the framers of the Constitution had some object in thus blending the two powers; and the reasons given for making the President and Senate parties to treaties apply with equal force to the appointing power. Both the Senate and President are necessary to make a treaty; and in the same sentence, the same parties are made the appointing power. Reckless of his acts as has been the respondent in this case, and regardless as he has proved of the Constitution, he has never yet dared to assume to be the sole treaty-making power in this government; that, without the concurrence of the Senate, he can conclude treaties and annul them. Sirs, under the Constitution, the treaty-making and appointing powers are identical; the same parties that make treaties make appointments; the President and Senate are both as essential in perfecting appointments as in making a treaty. And happy for the American people is this so, or would we again have the din of battle ringing in our ears, and war once more sweeping over the land.

Human genius has not yet been able to frame a rule for government in which all the powers are so perfectly defined and balanced as to be literally equal. Our own Constitution more nearly approaches such a form than any other that has been given to the world; but even in this instrument, framed by the wisest patriots of the age, one branch in the government is made superior to the others. This superiority follows from the nature of the duties with which each branch is intrusted, and the necessity of some controlling influence—the exponent of the people's will—in order to check usurpations and correct abuses, which in a republic are likely to arise in departments not directly responsible to the people. The grand object to be attained by our Constitution was the consolidation of the several States into one nation, by such a compact as would secure "the greatest good to the greatest number." It was to be a government *of* the people, *for the people*. The experience of ages had shown the necessity of a division of powers, and that one of these powers should possess an influence superior to that of the others; but no one power was made supreme or wholly independent of its cotemporaries. The judiciary is eminently "conservative" in its character; it is dependent upon the executive and legislative for its existence and perpetuity, is without creative authority, and its duties are mainly those of an advisory character.

That controlling influence in this great trinity of powers which form our government is the people, acting through their chosen representatives in Congress assembled. Even the most casual reader of the Constitution must see that such was the intent of its framers, from the wide range of authority delegated—even to regulating the executive and judiciary.

The Constitution lays down this great fundamental principle: "All power is derived from the people." Congress is the only branch in our government chosen directly from and by the people. The frequency of elections enables the people to change or ratify any policy that Congress may adopt, by retiring its members or indorsing their acts by re-election. This makes the legislative the mouthpiece of the people; to the people alone is Congress responsible, and it is through Congress the people are immediately represented in the government. The magnitude of the duties assigned to the legislative, and the authority given that branch over the executive and judiciary, aside from the imperative necessity, fully sustain the assumption that the legislative is the superior power in the three departments of government mentioned in our Constitution. Indeed, upon no other theory could the government be sustained. This control of the people in their government is the great feature in republicanism; this power of the many is the distinctive character of our Constitution. While the power of the executive is qualified and restricted by the legislative, the authority of the latter is uncontrolled by any other department. It makes and unmakes; it removes presidents, judges, and other civil officers who may be

guilty of high crimes and misdemeanors, and sweeps away all obstacles in the way of the nation's advancement and prosperity, and from its verdict, in a case of trial as this, there is no appeal.

A further examination of section two, article II, will disclose a peculiarity of expression which is important. "He shall nominate, and, by and with the advice and consent of the Senate, shall appoint * * all officers," &c. The very first step in the matter of appointment is by the Constitution given to the President to "nominate." The appointment is still inchoate. The next step is the concurrence of the Senate, and this completes the ceremony of appointment. It then becomes the duty of the President to issue the commission. In the case of Marbury *vs.* Madison (1 Cranch, 137-156) it was distinctly affirmed in the opinion of the Court that the President could not withhold a commission from an officer nominated and confirmed. (See, also, Story on the Constitution, section 1537.) It is the essence of all contracts or matters in which two or more are to act, that their minds must meet and concur, and when this is done the act is complete, and is thenceforward beyond the control of one without the consent of the other. But note again, the Constitution does not confer the power on the President to "appoint." His power is to "nominate," and when the Senate concur, and not till then, is he empowered to "appoint," and in doing this he merely carries out the previously determined wish of both parties to the appointment. In Marbury *vs.* Madison the court says, to "appoint and commission are not one and the same thing."

In the United States *vs.* LeBaron, 19 Howard, 74, the court says, the commission is not necessarily the appointment, although conclusive evidence of the fact. It would have been the simplest thing to have stripped this question of all doubt when the Constitution was framed, had there been a disposition to confer the authority upon the executive, here claimed in the defence. We know that the very matter now before this honorable body was discussed then, so that it cannot now be said we are called upon to decide new questions. By what right, then, or upon what principle of construction can you interpolate language into the Constitution, or give the language already there a meaning contrary to its letter?

Mr. Sedgwick, in his work on Construction, says:

> Where there is no obscurity in the effect of the laws, and the object aimed at by the legislature, we are not permitted to inquire into motives of the legislature, in order to defeat the law itself, *afortiori* any law subsequently passed on the same subject. (Sedgwick, p. 295; Dunn *vs* Reid; 10 Peter, 524.)

If this is true of statutes, it is much more a just rule in searching for the meaning of a fundamental law. I insist that the Constitution is perfectly clear and unambiguous upon the subject of appointment. There should be no division of opinion on this one point, it does seem to me. Attorney General Legare says:

> The people, however, were wisely jealous of this great power of appointing the agents of the executive department, and chose to restrain it by requiring it in all cases to *nominate*; but only in case it had the concurrence of the Senate to appoint. (3d Opinions, p. 675.)

But let us look further into this section. I have already alluded to the matter, but will repeat it in this connection. The language is: "But the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone." Now, sirs, there is a familiar maxim—"*expressio unius est exclusio alterius*"—which here prevails. The President is, by this clause, empowered to appoint such inferior officers as Congress may by law direct. Is it too much to urge that, by naming these particularly, and no others, it was intended he should alone appoint no others? But, sirs, even the maximum of the law need not here be invoked. The Constitution not only expresses one, and thus excludes others, but it expresses all—*i. e.*, it provides for the appointment of all officers of the government, and prescribes the manner of appointment

in this section. First, it gives the President and the Senate the power to appoint a certain class; and second, it gives Congress power to allow the President alone, the courts of law, or the heads of departments, to appoint certain others; and these cover the whole range of officers of the government; and, to my mind, it is the wildest reasoning that can vault itself into the position claimed by the respondent.

Chief Justice Best, in 5th Bingham, p. 180, gives a rule directly applicable here:

Where a general intention is expressed, and the act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered an exception.

The general intention of the framers of the Constitution was to make the appointing power joint with the President and Senate, and the exception only makes more imperative the general intention.

The inconvenience of uniting these powers in the multitude of minor officers made the exception necessary, but the general intention was only the more distinctly asserted.

But this power of removal, as implied from the power of appointment, is further shown to rest in the Senate and the President conjointly, by the adoption of the third section of the second article, which provides that

The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions, which shall expire at the end of the next session.

Mr. Wirt says, "The meaning of the Constitution seems to me to result in this: that the President alone cannot make a permanent appointment to those offices; that to render the appointment permanent it must receive the consent of the Senate; but that whenever a vacancy shall exist which the public interests require should be immediately filled, and in filling which the advice and consent of the Senate cannot be immediately asked, because of their recess, the President shall have power of filling it by an appointment which shall continue only until the Senate shall have passed upon it; or, in the language of the Constitution, "till the end of the next session."

I am not here discussing the question of vacancies and the power to fill them under the Constitution, but I desire to show that this particular clause of the Constitution now being noticed furnishes strong and direct evidence that the appointing power was intended to be kept undivided in the Senate and President, except in those cases where the two could not from some uncontrollable necessity act at the time. Hence we find Mr. Story holding what I think to be the undisputed construction of the clause, that "if the Senate are in session when offices are created by law, and nominations are not made to them by the President, he cannot appoint to such offices during the recess of the Senate, because a vacancy does not happen during the recess of the Senate. In many instances where offices are created by law, special power is on this very account given to the President to fill them during the recess; and it was then said that in no other instances had the President filled such vacant offices without the special authority of law." (2 Story, 1559.)

This author says again, in paragraph 1557: "There was but one of two courses to be adopted: either that the Senate should perpetually be in session, in order to provide for the appointment of officers, or that the President should be authorized to make temporary appointments during the recess, which should expire when the Senate should have had an opportunity to act on the subject."

This distinction between temporary and permanent appointments is recognized in the case of the United States *vs.* Kirkpatrick, 9 Wheaton, 720. The independent action of the President, in violation of the wishes of the Senate, seems not to have been anticipated. In a long list of casualties given by Mr. Wirt, in the opinion referred to, he had in mind only those causes which could not be foreseen as preventing the co-operation of the Senate.

It has been uniformly held that if vacancies are known to exist during the session of the Senate, and nominations are not then made, they cannot be filled by Executive appointment during a recess of the Senate. (4 Opinions, 362.) This would not be true if it were unimportant whether the Senate participated in the appointment.

It is urged here that the President not only has the power to appoint, but that, having that power, he may also remove, as a necessary incident. I will admit, that if it can be shown that the President may alone appoint to office, then if the tenure of the office is not fixed, but remains at the pleasure of the President, he may unquestionably remove that officer. But, sir, I shall show hereafter that the doctrine of incidental power goes no further than to extend to the President when he alone has the appointing power. I deny that the President anywhere has that power, save when conferred by Congress as prescribed by the Constitution. Besides, Mr. President, I assert that, prior to the opinion rendered by the late Attorney General, there can be nowhere found an authority going so far as did that learned gentleman. What says history upon this subject? Hamilton said, in No. 77 of the Federalist:

It has been mentioned as one of the advantages to be expected from the co-operation of the Senate, in the business of appointments, that it would contribute to the stability of the administration. The consent of that body would be necessary to displace, as well as appoint. The change of the Chief Magistrate, therefore, would not occasion so violent or so general a revolution in the officers of the government as might be expected if he were the sole disposer of offices. When a man in any station had given satisfactory evidence of his fitness for it, a new President would be restrained from attempting a change in favor of a person more agreeable to him, by the apprehension that the discountenance of the Senate might frustrate the attempt and bring some degree of discredit upon himself. Those who can best estimate the value of a steady administration will be most disposed to prize a provision which connects the official existence of public men with the approbation or disapprobation of that body which, from the greater permanency of its own composition, will, in all probability, be less subject to inconstancy than any other member of the government. To this union of the Senate with the President in the article of appointments, it has, in some cases, been objected that it would serve to give the President an *undue influence over the Senate;* because the Senate would have the power of *restraining* him. This is an absurdity in terms. It cannot admit of doubt that the entire power of appointment would enable him much more effectually to establish a dangerous empire over that body, than a mere power of nomination, subject to their control.

Mr. Hamilton then proceeds to review, in a masterly manner, the structure and power of the executive department, and in conclusion refers to the many restraints thrown around the Executive, and, speaking to this matter of appointing power, says: "In the only instance in which the abuse of the executive authority was materially to be feared, the Chief Magistrate would, by that plan, (speaking of the constitution,) be subjected to the control of a branch of the legislative body," and asks: "What more can an enlightened and reasonable people desire?"

In No. 76 of the Federalist the writer examines, at more length, the reasons which led to the adoption of this joint plan of appointment, instead of conferring the entire power upon the President; and he shows that the power given to the President was solely to *nominate*, while the President and Senate *appoint*. He shows that as the President must first nominate, he can always, even if the Senate reject, send back the name of some one of his choice; and this should satisfy those who insist upon giving supreme power of appointment to the Executive. He then asks:

To what purpose, then, require co-operation of the Senate? I answer that the necessity of the concurrence would have a powerful, though in general silent, operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in an administration. * * It will readily be comprehended that a man who had himself the sole disposition of offices would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the decision and determination of a different and independent body, and that body an entire branch of the legislature.

Now, sirs, I aver that at the time Hamilton wrote, it will be found in this matter he expressed not only his own views but the views of the people who adopted the Constitution.

Mr. Madison at this time entertained no other view, and his opinions had a large influence upon the people, and contributed, probably, more than those of any other one public man in bringing about the adoption of the Constitution. In No. 47 of the Federalist he argues at length to show that the maxim of Montesquieu, which requires a separation of the departments of power to secure liberty, is not true, and has not been without exception in any government other than an absolute monarchy. He then shows that by the British constitution the departments of government are not distinctive, but that one branch of the legislative forms, like our Senate, a great constitutional council to the chief executive; it is the sole depository of judicial power in impeachment, and is the supreme appellate jurisdiction in other cases. And the judges are so far connected with the legislative as to attend and participate in the deliberations, though not to vote.

Mr. Madison then shows that, notwithstanding the unqualified terms in which the axiom of Montesquieu is laid down by the Constitution of the States of the Confederation, there was not a single instance in which the several departments of power have been kept absolutely separate and distinct.

In New Hampshire the senate had the right of trial by impeachment. The president, who was the head of the executive department, was the presiding member of the senate, and had a casting vote. The legislature elected the executive, and his council were chosen from the legislature. Some State officers were appointed by the legislature, while the judiciary were appointed by the executive.

In Massachusetts the judiciary were appointed by the executive, and were removable by him on an address of the two branches of the legislature. Many officers of the State (some of them executive) were appointed by the legislature.

He passes over Rhode Island and Connecticut, as their constitutions were adopted before the Revolution, and before the principles under examination had become an object of attention.

In New York the powers of government were curiously blended. The executive had a partial control over the legislative, and a like control over the judiciary, and even blended the executive and judiciary in the exercise of this control. There was a council of appointment composed of the executive and partly of the legislative, which appointed both executive and judicial officers.

New Jersey blended the powers of government more than either of the foregoing. The governor, who was the executive, was appointed by the legislature, and yet he was not only the executive, but he was chancellor and surrogate of the State; he was a member of the supreme court of appeals and president, with a casting vote, of one of the legislative branches. This same legislative branch acted again as executive council of the governor, and with him constituted the court of appeals. The judiciary were appointed by the legislature.

Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, all had the same system of blended powers. In some of them even justices of the peace were appointed by the legislature.

It is scarcely possible to find anywhere in contemporary history a stronger proof of the jealousy with which the people clung to their right to control their own political affairs; and it was a great concession of the States of the Confederacy to the Union under the Constitution when they assented to the clause now being considered. In every State of the confederacy, at the time they were called upon to adopt the Constitution, the people, through the legislatures, not only made the laws, but they appointed the officers who were to execute them; and not only this, but provided for their removal in the same manner.

They seemed to have regarded the chief executive as an officer designated to assist the execution of the laws, but that it was unsafe to give him power to appoint those who were to co-operate with him in this duty.

I say it was a great concession, and a radical change which conferred upon the President of the United States even the prerogatives which are now undisputed.

Sirs, the people who adopted the Constitution were unaccustomed to looking upon their Executives as standing high above them and distributing the powers which they alone possessed. They had never been in the habit of clothing them with imperial powers, or permitting them to suppose for a moment that they were a distinct and separate entity of government. They had never, in a single instance, given to a State executive a distinct existence, separate from the legislative and judicial departments. He always acted conjointly, and upon the question of appointments to and removal from office, more than upon any other, they seemed to have been cautious.

With the light of this history, it is monstrous to suppose that the people parted with their power, as is claimed by the respondent, in adopting the article under discussion, that they gave up without a word of dissent all those checks upon the Executive with which they had been so familiar, and which they had so uniformly adopted in their State governments.

They did no such thing, Mr. President, and nowhere can it be shown they intended any such thing. On the contrary, we have seen that this clause of the Constitution was urged upon them for the very reason that it practically secured to them a system with which they had been so long familiar. The debates at that time show that the Constitution was adopted under the impression that this clause gave the power of appointment and removal jointly to the Senate and President, and they show, too, that the clause was framed to meet this view. I say, then, it is unwarrantable, upon any principle of constitutional or statutory construction, to give the instrument any other meaning.

As well might you annul an ordinary contract upon declarations given after it is signed. The most that can be shown is what the parties said at the time it was made, and the written compact is conclusive of the meaning expressed. We have seen how the people felt at the time. We have seen what two great writers upon the subject said at the time, and that their opinions influenced largely the adoption of the Constitution. Upon the question under discussion at that time there seemed but one mind.

Mr. President, I think I do not state it too strongly in saying that prior to the meeting of the first Congress, and at the time the Constitution was adopted, none of the friends of the Constitution claimed the power for the President which is now urged. Some of its enemies made the charge, but it was denied by its friends. No man in this country has studied more carefully the history on the subject than Mr. Story. He says, in his Commentaries on the Constitution, (pages 15, 39, 40, 41,) that the doctrine (speaking of the same construction urged by the managers) was maintained, with great earnestness, by the earliest writers, and says that at this period the friends of the Constitution had no other view. He cites 5 Marshall's Life of Washington, chapter 3, page 198, and 1 Lloyd's Debates, 351, 366, 450.

Of the effect of these opinions upon the public mind at that time this writer says:

> This was the doctrine maintained, with great earnestness, by the federalists, and it had a most material tendency to quiet the just alarms of the overwhelming influence and arbitrary exercise of this prerogative of the Executive, which might prove fatal to the personal independence and freedom of opinion of public officers, as well as to the public liberties of the country. (Story's Commentaries, sec. 1539. Story on Constitution, vol. ii, page 400.)

I have been endeavoring to show that at the adoption of the Constitution the appointing power was regarded and made a joint power between the Senate

and the President, as was also the power of removal. I think this position well established.

I have thus fully discussed the appointing power directly with the Senate because the same reasons that required that power to be joint apply with equal force to the power of removal.

Let us come down, however, to a period subsequent to the adoption of the Constitution.

Congress met March 4, 1789, and continued until September 29, of the same year. On the 27th of July they passed the act organizing the Department of Foreign Affairs, and on the 7th of August following was passed the act organizing the Department of War. These two acts are identical in language in every particular, except the assignment of duties to the different principal officers of the department. As much of the argument hinges on the law organizing the Department of War, at this time it is important to know just what was said and done at the time. There are some peculiarities of the law to which I invite attention.

Section one provides that—

There shall be an executive department to be denominated the Department of War, and that there shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined upon him by the President of the United States, agreeably to the Constitution, relative to military commissions, or to the land or naval forces, ships or warlike stores of the United States, or to such other matters respecting military or naval affairs as the President of the United States shall assign to said department, or relative to the granting of lands to persons entitled thereto for military services rendered to the United States, or relating to Indian affairs; and furthermore, that the said principal officer shall conduct the business of the said department in such manner as the President of the United States shall from time to time order or direct.

SEC. 2. That there shall be in the said department an inferior officer, to be appointed by the said principal officer, to be employed therein as he shall deem proper, and to be called the chief clerk in the Department of War, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall during such vacancy have charge and custody of all records, books, and papers appertaining to the said department.

SEC. 3. The said principal officer, and every other person to be appointed or employed in the said department, shall, before he enters on the execution of his office or employment, take an oath or affirmation well and faithfully to execute the trust committed to him.

SEC. 4. The Secretary for the Department of War, to be appointed in consequence of this act, shall forthwith, after his appointment, be entitled to have the custody and charge of all records, books, and papers in the office of Secretary for the Department of War, heretofore established by the United States in Congress assembled.

It is noticeable that the law nowhere provides how or by whom the principal officer is to be appointed. The language of the law is, in the first section, "there shall be a principal officer;" in the third section, "that the said principal officer and every other person to be appointed or employed in said department," &c., shall take an oath, &c.; in section four, "that the Secretary for the Department of War, to be appointed in consequence of this act, shall, forthwith after his appointment, be entitled to have custody and charge of all records," &c. It has been uniformly held that where no provision is made in the law for the appointment of the officer, the appointment must be made by and with the advice and consent of the Senate. (6th Attorney Generals' Opinions, page 1.) This results necessarily from the language of the Constitution. No provision was made in the laws organizing either of the executive departments as to how the principal officers were to be appointed; they were, therefore, all appointed by and with the advice and consent of the Senate. Is it not fair to suppose the removal was to take place in the same manner? On the same day the War Department was created, Congress passed an act giving the President power expressed to remove the governor and other officers of the territory organized under the ordinance of 1787, and yet these officers were by the same act to be appointed by and with the advice and consent of the Senate. Is it probable that Congress

would have made special provision for the exercise of power in one case, if they had supposed that power incident to the share the President took in the appointment? The act, it seems to me, clearly indicates that Congress regarded legislation necessary to confer the power, else it was needless to have legislated at all upon the subject.

But it is urged that the second section of the War Department act *does* confer this power, absolutely. I say not. The second section provides for the appointment, by the Secretary of War, of an inferior officer, to be called the "chief clerk," who, whenever the said principal officer (the Secretary) shall be removed by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have charge, &c.

There is a marked difference of expression between the act I have referred to as passed upon the same day, and this. In the one, the absolute power of revoking commissions and removing is conferred; in the other, the expression, "whenever the said principal officer shall be removed from office by the President," &c. Now, sirs, I think that the utmost which can be claimed from this grant, is recognition of a qualified and limited power over the Secretary of War, in case his removal should become necessary at a time when by the exercise of it a vacancy would be made at a time when the Senate could not assist in filling it. Provision had to be made for this, as the discussions at the time show, and I think the language means nothing more than that the President was to exercise the same and no more power than would be conceded to him in the entire absence of any provision on the subject. This law did not take the case out of the constitutional limitation, and by no legal interpretation can it be held to do so.

When the bill for organizing the Department of Foreign Affairs was under discussion, the original draft read "to be removed by the President." Upon this arose all the discussion which is chiefly relied upon by the counsel for the respondent. Whatever may or may not be proved by that discussion, one thing is observable, namely—the language of the first draft was materially changed, and, as finally adopted, left the question upon inference merely. Instead of declaring that this officer is removable by the President, in plain and unmistakable phrase, an equivocal expression was finally adopted, which it was thought would partially meet the views of the majority and yet decide nothing absolutely.

But let us notice for a moment this discussion of 1789. I am not inclined to underrate the value of that debate, but as forming any rule or guide for us I cannot give it great importance. The leading mind which controlled the removal party was that of Mr. Madison, and he it is known argued against his views expressed before the Constitution was adopted. Whether he began to have glimmering hopes of the presidency himself I will not say, but it certainly detracts from the value of his opinions to know that his views expressed after the Constitution was adopted were different from those entertained when he was urging its adoption. But, as I understand that discussion, the argument turned largely upon the necessity of this power resting somewhere at a time when there was a pressing emergency for its exercise.

The first proposition was made by Mr. Madison, that there be established an Executive Department, comprising the Departments of Foreign Affairs, of the War and of the Treasury, the chief officers thereof to be called Secretaries; to be nominated by the President and appointed by and with the advice and consent of the Senate, and "to be removable by the President." This resolution was finally made the basis for three separate bills, couched in similar language, creating the Department of Foreign Affairs, Department of the Treasury, and Department of War. The bill creating the Department of Foreign Affairs was first taken up, and gave rise to a long discussion. This bill was amended by inserting in

the second article words implying the right of the President to remove the Secretary, and was subsequently amended by striking out of the first article the authority of the President to make such removals. This last amendment was carried by a vote of 31 ayes to 19 nays, and the bill, as amended, passed the House by a vote of 29 to 22. In the Senate the bill was carried by the casting vote of the Vice-President.

It is an easily understood principle that where two or more unite in an act they may delegate the authority in all to any one of the number, and this, we may say, was done inferentially by the vote I have noticed. But, sirs, the Senate has since spoken upon this very subject many times, as I shall show, and on every occasion in unmistakable condemnation of the principle laid down by the respondent.

When John Quincy Adams, in 1826, attempted to entangle the United States in an alliance with the new republics of South America, and to establish what was popularly termed the "Panama mission," this encroachment upon legislative prerogative was sturdily resisted; the Senate insisting upon its rights to the utmost, even to contending that when a new mission is created it creates a new office, which does not come under the class of vacancies, and therefore the President has no right to fill it by a temporary appointment.

Under every administration since the days of Monroe, we observe attempts by the Executive to monopolize the right of appointment, but in every instance these encroachments were resisted, the Senate successfully asserting its joint authority to appoint and remove. In the session of 1825–'26, warned by the attempted exercise of this assumed power by Mr. Adams in the case of the Panama mission, a select committee was appointed by the Senate, charged with an inquiry into the expediency of reducing Executive patronage; which committee reported six bills, intended to control and regulate different branches of the public service and limit some exercises of Executive power. In one of the six bills, to secure in office faithful collectors and disbursers of the revenue, the President was required to report to Congress the causes for each removal. The section of the bill to that effect reads:

> That in all nominations made by the President to the Senate, to fill vacancies occasioned by an exercise of the President's power to remove from office, the fact of the removal shall be stated to the Senate at the same time that the nomination is made, with a statement of the reasons for which such officer may have been removed.

Benton says this was intended to operate as a restraint upon removals without cause, and "was a recognition of a principle essential to the proper exercise of the appointing power, and entirely consonant with Mr. Jefferson's idea of removals, but never admitted by any administration, nor enforced by the Senate against any one—always waiting the legal enactment. The opinion of nine such senators as composed the committee who proposed to legalize this principle, all of them democratic, and most of them aged and experienced, should stand for a persuasive reason why this principle should be legalized." (Benton's Thirty Years' View, vol. 1, chap. 29.)

During Jackson's administration this power of removal as claimed by the accused came before the Senate many times, and never but to receive a decided condemnation. Upon the breaking up of Jackson's first cabinet, Mr. Van Buren was nominated to the Senate as minister to England. His confirmation was opposed for several reasons, and among them it was charged that he introduced, as Jackson's Secretary of State, a system of proscription or removal for opinion's sake, and a formal motion was made by Mr. Holmes, of Maine, to raise a committee, with power to send for persons and papers, to inquire into the charges and report to the Senate. But this looked so much like an impeachment of the President that it was dropped. The same reasons for the rejection were urged, however. Among those who insisted upon the rejection for the reason I have stated, among others, were Clay, Webster, Clayton, Colonel

Hayne, of South Carolina, Governor Moore, of Alabama, and not least on the list was Thomas Ewing, of Ohio. Van Buren was rejected, and the right of the Senate and the truth of the principle I now insist upon was vindicated.

During Jackson's second term the question came up before the Senate in a different form. The offices of bank directors to the United States Bank were about to be vacated by limitation of their term. Jackson desired the reappointment of, and accordingly nominated, the incumbents. The Senate, for their own reasons, rejected the nominees. Jackson then attempted to coerce the Senate into the appointment, and accordingly sent the same names back, intimating in his message that he would nominate no others. The nominations went to a committee, who reported a resolution recommending rejection, which was immediately adopted. The report was an able review of the power of the Senate, and concludes as follows:

The Senate perceive, with regret, an intimation in the message that the President may no, see fit to send to the Senate the names of any other persons to be directors of the bank except those whose nominations have been already rejected. While the Senate will exercise its own rights according to its own views of duty, it will leave to the other officers of the government to decide for themselves on the manner they will perform their duties. The committee know no reasons why these offices should not be filled; or why, in this case, no further nominations should be made, after the Senate has exercised its unquestionable right of rejecting particular persons who have been nominated, any more than in other cases. The Senate will be ready at all times to receive and consider any such nominations as the President may present to it.

The Senate had condemned the assumption of the President in presuming to remove for opinion's sake, and here we have a condemnation of his attempt to perpetuate in office his own favorites against the wish of the Senate.

But Jackson persisted in putting the question to every conceivable test, and removed his Secretary of the Treasury (Mr. Duane) because he refused to do what he conceived to be a violation of the law and his duty in the removal of the public deposits. This was during a vacation of the Senate. The late Chief Justice Taney was put in charge of the department, and at once carried out the plans of Jackson. Upon the assembling of Congress Mr. Clay introduced into the Senate two resolutions in relation to the matter. The first one was as follows:

That by dismissing the late Secretary of the Treasury, because he would not, contrary to his sense of his own duty, remove the money of the United States in deposit with the Bank of the United States and its branches, in conformity with the President's opinion, and by appointing his successor, to effect such removal, which has been done, the President has assumed the exercise of a power over the treasury of the United States not granted to him by the Constitution and laws, and dangerous to the liberties of the people.

The resolution was adopted by a vote of 28 to 18.

Jackson held the nomination of Taney as Secretary of the Treasury in his pocket until the last week of the session of Congress; but it was rejected as soon as sent to the Senate. An acceptable name was afterwards presented, and the matter ended.

The next expression of the Senate upon the power of the President to remove a cabinet minister was even more decided in its condemnation of the false doctrine derived from the debate of 1789. I refer, sir, to the passage of the tenure-of-office act over the veto, and of course by two-thirds of both houses of Congress, on March 2, 1867. Both Senate and House here united in this expression; and in this they spoke for every representative element of this government and for the whole people.

Need I add to this chain of uniform decision the last vote of the Senate given on the 21st day of February, within twelve hours after the respondent had made the attempt to remove Mr. Stanton?

It is plain to my mind that those who voted with the majority in 1789 were not understood to give license to wholesale and causeless removals by the President. And we have the very highest evidence of this, not only in

the decisions of the Senate, which I have noticed, but in the uniform practice of the government throughout all administrations. I do not find that the first President ever exercised the power of removal, but if he did so, it will be seen, I venture to assert, that he consulted the Senate at the time or at its first session. I do find, however, an example of his great respect for, and deference to, that body which the Constitution had made his aid in making appointments.

Less than a month after the bill had passed organizing the Department of Foreign Affairs, he sent to the Senate the name of Benjamin Fishbourne, as naval officer at the port of Savannah. The Senate rejected the nomination. The President, fearing that in this there might be some misconception of his motives, sent another name, but gave his reasons in justification for nominating Colonel Fishbourne.

When John Adams desired to displace Mr. Pickering, his Secretary of State, and appoint another, he notified the incumbent that he would, on a certain day, cease to be Secretary of State. Meanwhile the Senate being in session he sent in the nomination of John Marshall, who was confirmed, and thus Mr. Pickering was removed, not by the President under any power the law gave, but under the Constitution and by virtue of the power incident to the appointing power vesting in the Senate and the President. This is a very striking and practical illustration of the doctrine then supposed to be the true one, and it was but following out the true spirit of the opinions expressed in the great debate of 1789.

Jefferson, the President who initiated the practice of removals, and was the first to confine his favors to his own party, made it a fundamental principle that removals were only to be made *for cause*. March 7, 1807, only three days after his induction into office, he writes to Mr. Monroe:

> Some removals, I know, must be made. They must be as few as possible, done gradually, and bottomed on some malversation or inherent disqualification.

On the 23d of the same month he thus writes to the governor of Virginia, Mr. Giles:

> Good men, to whom there is no objection but a difference of political opinion, practiced only so far as the right of a private citizen will justify, are not proper subjects of removal.

Six days after he writes to Eldridge Gerry, afterwards Vice-President:

> Mr. Adams's last appointments, when he knew he was appointing counsellors and aids for me, not for himself, I set aside as fast as depends on me. Officers who have been guilty of gross abuse of office, such as marshals packing juries, &c., I shall now remove, as my predecessor ought in justice to have done. The instances will be few, and governed by strict rule, and not party passion. The right of opinion shall suffer no invasion from me.

How, sir, did Mr. Jefferson proceed to displace incompetent or untrustworthy officers? If there was a vacation of the Senate he appointed successors and gave notice to the incumbent of his action. The successor then became the legal officer, and the incumbent was removed by virtue of the new appointment working a revocation of the old commission. If the Senate was in session when this transpired he sent the nominations to that body, and their concurrence in the new appointment worked the revocation. If the Senate was not in session at the time he sent the nominations to that body at its next meeting, and the confirmation concluded the appointment, its action being an order or approval *nunc pro tunc*. And this has been true of every administration except the present one. I ask counsel for the respondent to show a single removal from office by any President that was ever held of legal force that was not at the time or at a subsequent date approved by the Senate. When this is done the spirit and the letter of the Constitution are met, and when it is not done both are violated. Jefferson did not create vacancies. In making new appointments he rewarded his friends, and for cause he displaced incompetent men by appointing successors, but his action was always subject to review by the Senate. The Supreme Court said upon this point in *ex parte* Hennen: "The removal takes place in virtue of the new appointment by mere operation of law." Not the mere nomination, but the appointment.

Mr. Madison's administration will be searched in vain to find an instance where he ran counter to the will of the Senate in this matter of removals and appointments. In every instance where changes were made the Senate legalized them if they were appointments coming within the first clause of the second section, article second, of the Constitution.

I do not find that any occasion arose in Mr. Monroe's administration to present the question. I have elsewhere noticed the opinion of his Attorney General, William Wirt, upon the duties of the President in relation to the execution of laws which by their terms are to be executed by officers named in the law. This opinion completely overthrows the assumption of this respondent.

John Quincy Adams succeeded Mr. Monroe. There was no occasion for removals for political causes at this time. There was no revolution of parties. Mr. Adams had occupied the first place in Mr. Monroe's cabinet during the whole term of eight years, and stood in concurrence with his appointments. It was called "the era of good feeling." It will be found that he made no change in offices filled by nomination to the Senate which were not concurred in by that body.

When Jackson came in there was an entire political revolution in the country. He formed his cabinet, as all other Presidents had done, by nomination to the Senate. He displaced officials by nominating successors when the Senate was in session, or issuing commissions during vacation, which stood or fell as the first Senate thereafter decided. We have already seen how quickly the Senate brought this President to account for his first usurpation in the matter of removals when he removed Mr. Duane from the Treasury, although it was done during vacation.

Van Buren succeeded Jackson, and nowhere can I find that he violated the general practice of filling appointments and making removals.

Harrison's administration presents another instance of a complete revolution in party power. President Harrison in no instance ran counter to the Senate or made removals or appointments which were without the Senate's concurrence. Mr. Tyler, who succeeded him but a month after his inauguration, was so impressed with the history of Jackson's attempted usurpation that he made this very subject the occasion for remark in his inaugural message. He said:

> In view of the fact, well avouched in history, that the tendency of all human institutions is to concentrate power in the hands of a single man, and that their ultimate downfall has proceeded from this cause, I deem it to be of the most essential importance that a complete separation should take place between the sword and the purse. No matter where or how the public moneys shall be deposited, so long as the President can exert the power of appointing and removing at his pleasure the agents selected for their custody, the Commander-in chief of the army and navy is, in fact, the Treasurer. A permanent and radical change should therefore be decreed. The patronage incidental to the presidential office, already great, is constantly increasing. Such increase is destined to keep pace with the growth of our population, until, without a figure of speech, an army of office-holders may be spread over the land. The unrestrained power exerted by a selfishly ambitious man, in order either to perpetuate his authority or to hand it over to some favorite as his successor, may lead to the employment of all the means within his control to accomplish his object. The right to remove from office, while subjected to no just restraint, is inevitably destined to produce a spirit of crouching servility with the official corps, which, in order to uphold the hand which feeds them, would lead to direct and active interference with elections, both State and federal, thereby subjecting the course of State legislation to the dictation of the chief executive officer and making the will of that officer absolute and supreme.

When subsequently he found himself at variance with his cabinet, instead of removing them he caused scandalous things to be written and published of them in public newspapers, and revealed the cabinet consultations, which were published in the same way, thus making the position of the cabinet so unpleasant that they resigned. What I now state is alluded to in Mr. Ewing's letter of resignation. (Benton's Thirty-year View, p. 353.)

I will not pursue the history of removals and appointments in subsequent

administrations, but I assert that there will not be found in the practice pursued in any of them the slightest warrant for overriding the Senate either in appointments or removals without authority of law.

It is well understood that immediately upon the inauguration of a President the Senate is called together in extra session and at once go into executive session to consider any new appointments to be made. Cabinet changes are then made and submitted If the President could remove and appoint without them such proceeding would be useless. Indeed, the President, having in mind the selection of a cabinet he had reason to believe would be rejected by the Senate, would accomplish his purpose by withholding all nominations until the Senate adjourned, and thus defeat the very purpose of the Constitution in requiring the concurrence of the Senate.

Much weight has been attached to the judicial decisions upon the power of removal. A close scrutiny of these will show that they do not decide the question here discussed.

The opinion of the Supreme Court in *ex parte* Hennen establishes this simple proposition and no other, viz: The power of removal, in the absence of all constitutional or statutory regulation, is incident to the power of appointment. Hennen was appointed clerk of a court in Louisiana. The law creating the court gave the judge the power to appoint the clerk, but was silent as to how he might be removed. The judge removed Hennen. The Supreme Court of the United States held, on appeal, that the power of removal was incident to the power of appointment, and sustained the judge of the court accordingly. The court, in remarking upon the clause of the Constitution under discussion, remark:

> No one denied the power of the President and Senate, jointly, to remove where the tenure of the office was not fixed by the Constitution; which was a full recognition of the principle that the power of removal was incident to the power of appointment.

Any lawyer will see that this is all the court was called upon to say, and in going beyond this to discuss what had been the opinions expressed in the first Congress was mere *dictum*, and is not to be considered as judicial interpretation. It is no new thing for courts to go outside of the case before them, and the Supreme Court is not an exception. There is not, Mr. President, as no one knows better than yourself, a single decision recorded in the Supreme Court reports, where the power of the President to remove from office in violation of the expressed wish of the Senate was drawn in question. Trace the history of all removals by the President down to the present time, and there will be found no instance where a removal has been made to which the Senate has not made the act its own, expressly or impliedly, by confirming the successor to the office made vacant by removal, and this, sir, takes all decided cases out of this discussion.

What we claim is that the Senate must either be first consulted in the removal, or it must subsequently to the removal assent thereto.

In Marbury *vs.* Madison, (1 Cranch,) the power of the President to remove was not directly made a question. Marbury was nominated a justice of the peace for the District of Columbia, under a law which fixed the tenure of his office at four years. The Senate had concurred in the nomination, and the commission was signed by the President but not yet delivered. Mr. Madison, the Secretary of State, refused to deliver it, and a mandamus was sued out to compel him to do so. The court decided that a mandamus could not lie against the head of an executive department. Upon the right of Marbury to his commission, however, the court said:

> Some point of time must be taken when the power of the Executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power has been performed.

By the act of 1789, creating the Department of Foreign Affairs, it was made the duty of the Secretary of that department to affix the seal of the United States to all commissions signed by the President. Upon the point as to whether the President could arrest the commission here the court said :

> This is not a proceeding which may be varied if the judgment of the Executive shall suggest one more eligible; *but is a precise course, accurately marked out by law*, and is to be *strictly pursued*. It is the duty of the Secretary of State to conform to the law, and in this he is an officer of the United States, bound to obey the laws. He acts under the authority of the law, and not by the instructions of the President.

If that case bears upon this, it goes only to show that the President cannot interfere with the due progress of the law, under the assumption that he is Chief Executive, and therefore possessed of power to control all executive offices.

If there are any decisions of the Supreme Court directly in point they have escaped me. I assume there are none, for the respondent states that he was governed in his action mainly to make a case for the courts, in order to obtain a judicial decision. For the first time in our history have we a direct issue between the two appointing powers. For the first time have we a case where the Senate, refusing to concur in a removal, the President ignores that body and defies its expressed will, and that, too, in the face of a positive enactment.

Sirs, I contend that the Department of War to-day, of which Edwin M. Stanton is Secretary, is not the Department of War of which Henry Knox was Secretary under George Washington. I have shown that by the act of 1789 the law simply created the department, but assigned no duties to it except such as might suggest themselves as necessary to the President.

The department remained thus, without any duties imposed upon it by law, and without any legislation recognizing its importance or its distinctiveness, until May 8, 1798. Meanwhile, the duties pertaining to the navy had been taken from the War Department and conferred on a separate department; Congress had given the power to make contracts for war and navy materials to the Secretary of the Treasury.

By the act of July 16, 1798, it was provided that all contracts and all purchases for the military service should be made by direction of the Secretary of War. The law also made it the duty of the public purveyor, who was an important officer and responsible for large sums of money, to report to the Secretary of War. The change here may seem unimportant, but it marks the beginning of that emancipation of the War Department from the manacles of executive control, which is now by law made so complete.

The subsequent laws organizing the pay department, the quartermaster and commissary departments, the engineer and ordnance corps, all recognize the Secretary of War as in many respects the chief and sole executive officer for the discharge of specific duties, with which the President had nothing whatever to do.

Still later, in 1812, when an army was raised to meet the apprehended war with Great Britain, greater powers were conferred on the Secretary of War. In the Indian wars, in the war with Mexico, and especially in the late war against rebellion, Congress seemed to have treated the Secretary of War as the only executive officer with whom they had anything to do, so far as that Department was concerned, and the legislation does not in many instances recognize the existence of a chief executive—so great and powerful an engine of government had the War Department become. Resolutions of inquiry for information in relation to military affairs were all directed to the Secretary of War, and he made answer to Congress himself, without consultation with the President. The entire and immense system of purchase and supplies for the army, the organization and equipment of troops, the moving of troops and mil-

itary supplies, the sequestration of the enemy's property, the entire internal management of army affairs, the payment and disbursement of millions of dollars annually, the adjustment of numberless claims against the government, are all by law imposed upon the Secretary of War. Indeed, the War Department has, by virtue of laws passed since 1789, been completely changed, and instead of being a mere appendage to the Executive office, with an amanuensis in it to write what the President might dictate, it is now, next to the Treasury, the most powerful and important department of the government.

Take up the statute-books and compare the laws as they now stand, and as they stood when Congress spoke the department into existence by four short sections in the act of 1789. You will find that there is scarcely a vestige of the act of 1789 left in force. That made the Department of War a part of the Executive office, with its whole control in the President. The laws now place the specific duties of that vast department in the hands of the Secretary, and hold him alone responsible. The very necessities of our national growth have wrought this change, and the people have come to hold the President no longer responsible, as they once did, for the conduct of the executive departments. Any one who, during the late war, had occasion to appeal from Mr. Stanton's decision in matters appertaining to his legal functions, knows that what I state was recognized by the President as true.

This, too, has been recognized by judicial decision. The President has no right to perform executive acts by law given to his Secretaries. He had this right in 1789, because the law made them the executors of his will, merely.

Can the President make a contract for the supply of the army or navy, which the courts would hold binding? Can he give legal effect to an act which the law requires a particular officer of the government to do? Can he step into the War, Treasury, or Navy Departments and sign official papers which the Secretaries sign, and make his acts legal? If he is the chief and only controlling executive, why has not he cut the Gordian knot by taking the War Department reins into his own hands until the Senate shall confirm his nominees?

There can be no other safe view to take of this question—any other leads to despotism. In speaking of the executive departments during the great discussion upon President Jackson's removal of his Secretary of the Treasury, Mr. Clay said:

> We have established and designated offices, and appointed officers in each of these respective departments to execute the duties respectively allotted to them. The President, it is true, presides over the whole. Specific duties are often assigned by particular laws to him alone, or to other officers under his superintendence. His parental eye is presumed to survey the whole extent of the system in all its movements; but has he power to come into Congress and say such laws only shall you pass; to go into the courts and prescribe the decisions they may pronounce, or even to enter the offices of administration, and where duties are specially confided to those officers, to substitute his will to their duty? Or has he a right, when those functionaries, deliberating upon their own solemn obligations to the people, have moved forward in their assigned spheres, to arrest their lawful progress because they have dared to act contrary to his pleasure? No, sir. No, sir. His is a high and glorious station, but it is one of observation and superintendence. It is to see that obstructions in the forward movement of government, unlawfully interposed, shall be abated by legitimate and competent means.

Will gentlemen consider for a moment the tremendous consequences of the doctrine claimed by this respondent? If, sirs, this Senate concede the power arrogated to the President, he is henceforward the government. Even Congress is powerless to arrest his despotic rule.

Suppose he desired to force upon the country a certain policy, and chose the Secretary of the Treasury, with his immense power, for his instrument. That officer might decline to execute the President's will, and claim that the law conferred upon him alone certain specific duties which he could not conscientiously abandon to the dictates of the President. The remedy is at hand, and the official guillotine commences its work. An obsequious tool of the Executive is placed at the head of the Treasury, and the Senate and the people are tied hand and foot. He

may remove at any time. He may withhold the name of the appointee till the very close of an intervening Senate, and should the Senate reject, he may reappoint the same person, or another equally subservient. Indeed, sir, if the absolute power claimed is conceded, he may so arrange the appointment as to avoid submitting it at all to the Senate. Can it be possible that a power so tremendous in its consequences was ever intended?

If the Congress of the United States have no right by legislative enactment to fix the tenure to certain offices, and exercise their joint authority in appointments as well as removals from office, what restriction is there on the President's power?

If he can control the Treasury by this ingenious, not to say despotic, means, does his power end there? He may remove the Secretary of War and the General-in-chief, if they dare dispute his policy. He thus possesses himself of the purse of the nation, and next its army. Let me ask the learned counsel, if they be correct in claiming the inherent right of removal in the President, where is the authority that makes Sherman's, Sheridan's or Farragut's commissions more than blank parchment before the imperial throne at the White House? Under what authority can the Secretaries of the Navy, of State, Department of Interior, Postmaster General, and the thousands of officers of the several executive branches of government, scattered all over the land, shield themselves from the withering and corrupting touch of the Executive wand, when he chooses to command their removal?

If the President can do these things with impunity, let me ask if we have not that state of government forewarned by Mr. Seward's question, Will you have Andrew Johnson President or King?

We hear much said about the so-called cabinet council of the President. The heads of executive departments have become cabinet ministers, who hover around their chief as aids to a general of the army, and the argument is used that you might with the same propriety force an obnoxious aid upon a general, as an obnoxious cabinet minister upon the President. Sirs, what is the origin of cabinet councils, and whence comes the appellation cabinet minister? I do not find them anywhere in the law which organized the several departments. Let us not be deceived by names. I know of no authority for convening cabinet conclaves semi-weekly, and I fear, these councils are cabals in which the public weal is much less discussed than the party weal.

Tell me why the Postmaster General need be called to consult as to how the Navy Department should be administered; and what necessary connection is there between the duties of the Attorney General as prescribed by law, and those appertaining to the War Department? Sirs, the so-called cabinet councils are misleading us, and so far has this independent and self-constituted board of government directors counselled the accused that he sets up the difference existing between him and the Secretary of War as working their loss of the latter's counsel in this cabal, and from this he excuses his attempt to remove him. You are asked to give legal existence to this cabinet, and say the Secretary of War has duties to perform there, failing in which he must leave his department. This cabinet appendage to our executive government is an innovation, and should not be legalized.

The Constitution says the President "may require the opinion, in writing, of the principal officers of each of the executive departments *upon any subject relating to the duties of their respective offices.*"

But, sirs, it nowhere authorizes him to consolidate the heads of these departments into a cabal to discuss party politics, and devise ways to perpetuate their tenure by securing the re-election of their chief. There is danger in our forgetting that the law-making power of this government has imposed duties and obligations upon these heads of departments which they cannot delegate to

the President, much less the cabinet, and which neither the President nor the cabinet can arrogate to themselves.

In this portion of the defence set up, I do not find that any breach of duty is charged to the Secretary of War. It does not appear that he has been derelict in anything enjoined upon him by law. No, sirs; he has ceased to be an agreeable companion to the President's cabinet tea-parties, and he must be decapitated. Under all this lies much of that evil growing out of the power arrogated to the President. Here is the seed of executive consolidation, of which the fathers had such dread. These secret meetings tend to destroy that independence of administration which the law contemplates. Napoleon used to say that councils of war never fought battles. I think, sirs, I may say that cabinet councils do not always execute laws.

I come now to notice the second branch of the offence involved in the first charge, viz:

HAD THE PRESIDENT POWER TO REMOVE THE SECRETARY OF WAR IN VIOLATION OF THE TENURE-OF-OFFICE ACT?

The first section of this act reads as follows:

That every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been appointed by the President, with the advice and consent of the Senate, and duly qualified; and that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General and the Attorney General, shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and for one month thereafter, subject to removal by and with the advice and consent of the Senate.

It is urged by the accused, in order to evade the necessary consequences attending a violation of this act, first, that it is unconstitutional, and, second, that it does not reach Mr. Stanton's case.

The first of these points goes to the power of Congress to enact any law on the subject of tenure of office, while the second is a legal quibble upon the language of the law, which the respondent knows better than any one else is a plain violation of the spirit and intent, not to say letter of the act. Let us consider briefly these two points.

First: IS THE TENURE ACT CONSTITUTIONAL?

It would seem idle to discuss a question which, so far as this Senate is concerned, is *res adjudicata*. I am surprised, sirs, to find counsel of such eminence as those pleading for the accused coming before a court and rearguing with pretentious hopes of reversing a decision deliberately made by over two-thirds of this body. Would they thus presume before the Supreme Court of the United States? One of the counsel once sat upon that bench. Would he have tolerated an argument upon a decision of that court which had been rendered after repeated examinations by the most learned of the country, exhausting every phase of argument on both sides, and which decision was finally concurred in by two-thirds of the court?

But the question is before the Senate again; has been elaborately argued, and courtesy to the counsel for the respondent, if no other reason offers, would seem to require for it a passing notice.

I do not observe in the remarks of counsel any argument different from that given in the message vetoing the act of March 2, 1867. This did not prevail before the Senate then, and I see no reason why it should now. We are told there that the question arose and was settled in the discussion of 1789 when the War Department and Foreign Department were created. I think the question presented then is much misapprehended. It was not whether Congress had the power to legislate upon the subject. It was whether they ought to confer the power of removal on the President. If the power *inheres* in the President the act then passed was wholly gratuitous and unnecessary. To my mind the persistent

determination with which the majority (and a small one it was) insisted upon putting into those acts of 1789 a clause impliedly giving the power of removal to the President, is the highest proof of their belief in the power of Congress to legislate upon the subject, and that without legislation the President would not possess the authority to remove. If Congress was competent to grant the power to the President are they not equally competent to withhold it?

The only officers of the government whose tenure is fixed by the Constitution are the President and Vice-President and the judges of the Supreme Court and such inferior courts as Congress may establish. (Articles 2 and 3.) The President and Vice-President hold for four years, but Congress may remove them by impeachment. The judges hold "during good behavior," but who can decide the good or bad behavior of judges except Congress? Congress can not abridge the tenure of the office, but they can abridge the officer's tenure by impeaching him.

This, sirs, is the only limitation upon Congress anywhere to be found in the Constitution upon the subject of controlling official tenure.

The Constitution is silent on the subject of tenure. I hold, therefore, that the whole power is vested in Congress to provide, whenever and however they choose, both for appointment to and removal from office. There is not an officer mentioned in the second clause of the second article over whom Congress has not control in such manner as they may by law provide, except in the cases mentioned.

Congress is perfectly competent to fix any tenure it deems best to ambassadors, ministers, consuls, or any other officers than those whose term of office is fixed by the Constitution. The section of the Constitution to which I have alluded only provides for the manner of appointment; it does not restrain Congress from giving a tenure to the offices which it establishes, and to impose such restraint by implication is wholly unwarrantable. Nothing but the method of appointment is attempted to be controlled. Suppose Congress should determine that the efficiency of our diplomatic system is greatly impaired by the frequent and causeless changes made among ministers, ambassadors, or consuls, and that the practice of putting spies upon them, and crediting such mythical men as McCracken, and recalling ministers upon their statements, should be stopped—could no law be passed fixing their tenure, requiring the President to advise with the Senate before recalling the minister, leaving us unrepresented abroad, except where he did so for good cause?

The object of the Constitution was to provide the means of filling offices which Congress might establish. No intention was expressed to control absolutely the tenure of the office, or prohibit Congress from prescribing means of removal.

If Congress cannot do more than make the office and prescribe the duties incumbent upon the person filling it, in the matter of those officers referred to in the first part of section second, article second, how can Congress do more, in the creating of inferior officers, spoken of in the last part of the section? It says, "Congress may vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments." Suppose Congress create a board of examiners to examine into the national banks, and give the President the power to appoint them. Congress has then exhausted all the directly conferred power given them by the letter of the Constitution, and they are powerless to fix the tenure here if they are in the other cases. The argument urged is that the power to remove is incident to the power to appoint. The President by law appoints, and therefore he alone can terminate the officer's tenure. Congress, by giving the President the power to appoint, is estopped from fixing the tenure, so as to control the President's removing prerogative. But, sirs, we know this is not true. The country is

filled with officers, civil and military, some of them appointed by the President alone, others by and with the advice and consent of the Senate, and yet Congress, in these cases, has never been held to be powerless to fix the tenure.

Wherein is the difference between the Constitution saying the President and Senate may appoint certain officers created by law, or the Constitution saying Congress may provide means of filling certain offices? The will of the people is expressed in the same manner through the Constitution, directly to the President and Senate in one case, and indirectly to the President, to courts of law, or heads of departments in the other case, but in neither case do they say through the Constitution, directly or impliedly, that Congress, who create the office, shall not adjust its tenure. The reason for giving the appointment of inferior officers into other hands than the Senate and President was to provide for speedy execution of the law, and for early action in filling the offices. Inferior officers were of less importance; they were numerous; vacancies were constantly occurring, and hence the necessity of relieving the Senate and President from acting jointly. But the reason for giving Congress power to control the tenure of inferior offices applies with much greater weight in the case of higher officers, whose wanton and capricious removal may lead to infinitely more dangerous consequences.

If this view be correct, there can be nothing left of the argument against the constitutionality of the tenure act. In Marbury *vs.* Madison, the case of an officer appointed by the President and Senate is presented, where the law also fixed the tenure of the office at five years. In this case the court said:

> If the officer be removable *at the will of the President*, then a new appointment may be immediately made, and the rights of the officer terminated; if the officer is by law not removable at the will of the President, the rights the officer has acquired are protected by the law, and are not resumable by the President. They cannot be extinguished by the Executive.

This would be bad law if Congress were powerless to fix a tenure, and it is no answer to say Congress may fix the number of years the officer is to serve, for if the term of years can be fixed, so can the manner of his removals.

If Congress can pass one step beyond the power to create the office and provide for filling it, then they can regulate the tenure in any and all particulars. The question cannot turn upon who are or who are not inferior officers, for here we would be left in a maze and labyrinth, and the President could shield himself behind a will-o'-the-wisp. The Constitution does not pretend to define who are or who are not inferior officers, and the fact that this is left undefined shows that the matter of controlling the tenure, by congressional enactment, of either the one or the other, was not the question the framers had in mind. It was much discussed in 1789 as to whether the heads of departments are inferior officers, and the result of the discussion is doubtful, and really settled nothing.* But whether they are or are not does not affect the question in hand. Because this appointment is to be by both Senate and President does not settle it, else every petty postmaster and collector in the country must be held to rank with ambassadors, ministers, and judges of the Supreme Court. What rule determines whether the General-in-chief and all subordinate military officers are or are not inferior officers? There is none. The army is a creature of law, and Congress has always regulated it as it chose. Some of its officers were placed under the control of the War Department; some minor ones even appointed by the Secretary. Others were nominated to and confirmed by the Senate. In point of fact, however, officers of the army are not regarded as inferior officers, yet Congress has regulated the whole army system, imposing restraints upon the President in many ways with regard to it. The question came up in Mr. Monroe's administration, and was discussed in his message of April 12, 1822.

*1 Lloyd's Debates, 480 to 600, Sargeant on Constitution, ch. 29, (ch. 31.) 2 Lloyd's Debates, 1 to 12.

(1 Ex. Journal, 286.) The Senate disagreed with Mr. Monroe, and held that Congress had the right to fix the rule as to promotions and appointments as well as to reductions in the army, and that this right had, to that time, never been disputed by any President. It is true this was claimed under the general power to make all needful rules and regulations for the government of the army, but that clause of the Constitution confers no more executive control on Congress in respect to the army than does the clause which provides that Congress shall establish post offices and post roads over the manner of appointing postmasters.

Story says: (Sec. 1537,)

As far as Congress possesses the power to regulate and delegate the appointment of inferior officers, so far they may prescribe the term of office, the manner in which and the persons by whom the removal as well as the appointment to office may be made.

But, as we have seen the clause of the Constitution on this subject does not define who are inferior officers, and does not separate them from other officers with any view to give Congress greater control over their tenure than in other cases, we are brought back again to my position, that there is no restraint upon Congress to regulate the tenure in the one case more than the other.

The officers of the army then coming within the class titled superior, as distinguished from inferior, they are to be placed beside and are to rank with ambassadors, ministers, cabinet officers, &c., and if Congress is competent to control the tenure of the one, it is of the other. Unfortunately for the consistency of the respondent's special plea he is on the record against himself.

By the act of July 13, 1866, section five, it is provided that—

No officer in the military or naval service shall, in time of peace, be dismissed from service except upon, and in pursuance of, the sentence of a court-martial to that effect or in commutation therefor.

Here is a direct inroad upon the prerogative of the President, as now set up, and admits the whole principle here contended for. Where were the vigilant advisers of the President when he approved the bill and made it law? Was there no genius of executive prerogatives near to whisper "Veto?" Was the facile logic of the law officer of the President reserving itself for this occasion?

But this principle of recognizing the *right* or *power* of Congress to legislate as to how an officer is to be displaced had the sanction of Mr. Lincoln in the act of February 25, 1863, creating the office of Comptroller of the Currency. It provides as follows:

He shall be appointed by the President, on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of two years, unless sooner removed by the President, by and with the advice and consent of the Senate.

This is not a power recently claimed by Congress. I have shown in another part of the argument that many unsuccessful efforts were made at different periods of our national history to pass laws similar to the present tenure act, and they were supported by members of all shades of politics. The constitutionality of such laws was not questioned, but the bills always failed from executive influences brought to bear upon Congress. Mr. Benton was an earnest advocate of a tenure act limiting executive control over appointments and removals.

Mr. Clay and Mr. Webster have left upon the records of the Senate arguments not only showing the constitutionality of such laws, but giving the most weighty reasons for passing them upon the grounds of public policy and safety.

In 1835 a lengthy discussion occurred upon an amendment offered by Mr. Clay to a pending bill which embraced every principle of the present tenure act. I will be pardoned for giving a condensed statement of the view taken at that time by three senators who participated in the discussion, as giving briefly

the whole argument upon this question. Mr. Clay supported his position by the following arguments, among others :

It is legislative authority which creates the office, defines its duties, and may prescribe its duration. I speak, of course, of offices not created by the Constitution, but the law. The office coming into existence by the will of Congress, the same will may provide how and in what manner the office and officer shall cease to exist. It may direct the conditions on which he shall hold the office, and when and how he shall be dismissed. Suppose the Constitution had omitted to prescribe the tenure of the judicial oath, could not Congress do it ?

But the Constitution has not fixed the tenure of any subordinate officers, and therefore Congress may supply the omission. It would be unreasonable to contend that, although Congress, in pursuance of the public good, brings the office and the officer into being, and assigns their purposes, yet the President has a control over the officer which Congress cannot reach and regulate. * * The precedent of 1789 was established in the House of Representatives against the opinion of a large and able minority, and in the Senate by the casting vote of the Vice-President, John Adams. It is impossible to read the debate which it occasioned without being impressed with the conviction that the just confidence reposed in the father of his country, then at the head of the government, had great, if not decisive, influence in establishing it. It has never, prior to the commencement of the present administration, been submitted to the process of review. * * * No one can carefully examine the debate in the House of Representatives in 1789 without being struck with the superiority of the argument on the side of the minority, and the unsatisfactory nature of that of the majority.

Daniel Webster agreed with Mr. Clay in his position in the following language, used by him on the occasion :

I think, then, sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been regarded as a part of it, and exercised by the same hands. I think the legislature possesses the power of regulating the condition, duration, qualification, and tenure of office in all cases where the Constitution has made no express provision on the subject. I am, therefore, of opinion that it is competent for Congress to decide by law, as one qualification of the tenure of office, that the incumbent shall remain in place till the President shall remove him, for reasons to be stated to the Senate. And I am of opinion that this qualification, mild and gentle as it is, will have some effect in arresting the evils which beset the progress of the government, and seriously threaten its future prosperity.

This view was sustained by the Hon. Thomas Ewing, of Ohio :

Mr. Ewing spoke at length upon the question of removals, maintaining that the Constitution does not confer on the President alone the power of removal ; that it is a matter of legislative provision, subject to be vested, modified, changed, or taken away at their will ; and if it is not regulated at all by law, it rests in the President, in conjunction with the Senate, as part of the appointing power.

The respondent cannot, I think, find support in any precedent or decision, or by any right construction of the Constitution. What, then, becomes of his reliance upon these in defence of his wilful violations of the act? He stands convicted by his own confession. Did he make a mistake in his research, and did he innocently misinterpret the Constitution? These mistakes and these innocent misinterpretations are too serious to be thus condoned. To admit them as a good defence would emasculate every criminal law in the land, and leave all public officers free to misinterpret statutes with impunity, and, no matter what the consequences, they could shield themselves from punishment. Mr. Johnson's pretended prototype, Jackson, did not so understand the law. When the Senate passed the resolution declaring his removal of his Secretary of the Treasury, Mr. Duane, a usurpation, Jackson regarded it as equivalent to impeachment. In his protest to the Senate he said :

That the resolution does not expressly allege that the assumption of power and authority which it condemns was intentional and corrupt, is no answer to the preceding view of its character and effect. The act thus condemned necessarily implies volition and design in the individual to whom it is imputed, and being unlawful in its character the legal conclusion is, that it was prompted by improper motives, and committed with an unlawful intent. The charge is not of a mistake in the exercise of supposed powers, but of the assumption of powers

not conferred by the Constitution and laws, but in derogation of both, and nothing is suggested to excuse or palliate the turpitude of the act. In the absence of any such excuse or palliation there is room only for one inference, and that is, that the intent was unlawful and corrupt.

I cannot believe the respondent relies upon this plea of innocent intent as amounting even to a shadow of defence. He not only took the risk of construing the Constitution upon a question not settled by any judicial decision, but he did it in direct defiance of the solemn judgment of this Senate; and he to-day defies this judgment by denouncing the tenure act as unconstitutional. But the accused says even if the tenure act be held constitutional, still he is guiltless, because it does not apply to the case of Mr. Stanton; and this brings me to inquire—

Second. DOES THE TENURE ACT APPLY TO THE PRESENT SECRETARY OF WAR?

It is a new method of ascertaining the meaning of a law, plain upon its face, by resorting to legislative discussions, and giving in evidence opinions of persons affected by the law. As a matter of fact, it is well known the act was intended to prevent the very thing Mr. Johnson attempted in the matter of Mr. Stanton's removal, I think this manner of defence will not avail before this Senate. The law must govern in its natural and plain intendment, and will not be frittered away by extraneous interpretation. The President in his veto message admits substantially this construction.

The proviso does not change the general provisions of the act except by giving a more definite limit to the term of office, but the last paragraph of the act puts the whole question back into the hands of the Senate according to the general intention of the act, and provides that even the Secretaries are "subject to removal by and with the advice and consent of the Senate."

The act first provides that all persons holding civil offices at the date of its passage appointed by and with the advice and consent of the Senate shall only be removed in the same manner. This applies to the Secretary of War. The proviso merely gives a tenure running with the term of the President and one month thereafter, subject to removal by the advice and consent of the Senate. The law clearly gives Mr. Stanton a right to the office from the 4th of March, 1865, till one month after the 4th of March, 1869, and he can only be disturbed in that tenure by the President by and with the advice and consent of the Senate.

Yet, although Mr. Stanton was appointed by Mr. Lincoln in his first term, when there was no tenure to the office fixed by law, and continued by Mr. Lincoln in his second term, it is argued that his term expired one month after the passage of the tenure-of-office act, March 2, 1867, for the reason that Mr. Lincoln's term expired at his death. This is false reasoning; the Constitution fixes the term of the President at four years, and by law the commencement of his term is the 4th of March. Will it be said that when Mr. Johnson is deposed by a verdict of the Senate that the officer who will succeed him, will serve for four years? Certainly not. Why? Because he will have no presidential term, and will be merely serving out a part of the unexpired term of Mr. Lincoln, and will go out of office 4th of March, 1869, at the time Mr. Lincoln would have retired by expiration of his term, had he lived.

I give section 10 of the act of March 1, 1792, which settles the question whether the term ceases with the death or resignation of the President, which so clearly decides the matter and settles it that no argument is necessary further on the subject:

SECTION 10. *And be it further enacted*, That whenever the offices of President or Vice Presidentshall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State, specifying that electors of the President of the United States shall be appointed or chosen in the several States within thirty-four days preceding the first Wednesday in December then next ensuing: *Provided*,

There shall be the space of two months between the date of such notification and the said first Wednesday in December, but if there shall not be the space of two months between the date of such notification and the first Wednesday in December, and if the term for which the President and Vice-President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December in the year next ensuing, within which time the electors shall accordingly be appointed or chosen, and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors and others shall be pursuant to the directions prescribed in this act. * * * * * * *

This law settles certainly the question, if any doubt existed before, that the term does not expire on the death or resignation of the President, but continues as his term the four years.

But I will not argue this question at more length. If the judgment of men, deliberately expressed, can ever be relied upon, I think it safe to assume that this Senate will not reverse its judgment so recently expressed upon the constitutionality and meaning of the tenure act. The only question then which remains is simply this: Has the accused violated that act? No one knows better than this accused the history of, and the purpose to be secured by, that act. It was ably and exhaustively discussed on both sides, in all aspects. In the debates of Congress it was subsequently reviewed and closely analyzed in a veto message of the respondent. No portion of that act escaped his remark, and no practical application which has been made of it since did he fail to anticipate. He knew before he attempted its violation that more than three-fourths of the representatives of the people in Congress assembled had set their seal of disapprobation upon the reasons given in the veto message, and had enacted the law by more than the constitutional number of votes required. Nay, more; he was repeatedly warned, by investigations made looking towards just such a proceeding as is now being witnessed in this court, that the people had instructed their representatives to tolerate no violation of the laws constitutionally enacted. What then is the violation here charged upon this respondent, and what are the proofs to sustain it? Upon the 21st day of February, 1868, the respondent sent the following official order to Edwin M. Stanton, Secretary of War:

EXECUTIVE MANSION, WASHINGTON, D. C.,
February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States, you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon the receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other property now in your custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Hon. EDWIN M. STANTON, *Washington, D. C.*

Upon the same day he sent to Lorenzo Thomas, Adjutant General of the army, the following order:

EXECUTIVE MANSION, WASHINGTON, D. C.,
February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from the office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General United States Army, Washington, D. C.

Every person holding any civil office, to which he has been appointed by and with the

advice and consent of the Senate, * * * is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified.

This plain and not to be misunderstood provision of the law is violated. The order for removal was made absolute and without condition. The President ignored all "advice and consent of the Senate," and planted himself upon his own opinion as to his inherent power to act outside of the law and in violation of it; and his answer so confesses. The proofs of his guilt are therefore placed beyond dispute. What, sirs, says the law with regard to the crime involved in such conduct? The sixth section of the same act declares that "every removal * * * made * * * contrary to the provisions of this act * * * is hereby declared to be a high misdemeanor."

Upon these facts, and in the face of this law, can there be a doubt that the charge is fully sustained? Need we pursue the question of intent, when by the terms of the law the mere act of removal, in violation of it, is declared a "high misdemeanor?" But, sirs, we do not shrink from an examination into the motives which actuated this accused. The history of his public acts since the passage of this law is crowded with evidences of his guilty intent. To-day, with the fear of that law before his eyes, he conforms strictly to its requirements; to-morrow he openly defies it and declares his purpose not to be governed by it; and, with the strangest inconsistency and indecision of character, he wavers between the plainest duty pointed out by law and the rashest contempt of all law. We have shown by the testimony that, under his instructions, the chiefs of the departments changed the forms of official bonds of commissions and letters of appointment to adapt them to the requirements of this law. We have seen that within five months after its passage, he suspended the Secretary of War and notified the several executive departments that he had done so under the provisions of this act. We have seen that hundreds of commissions, to fill various offices, were issued under his sign manual, distinctly recognizing the provisions of this act. Yet, in defiance of the law and in disregard of his own repeated recognition of it, he asks this Senate to hold him guiltless. Do the annals of criminal trials anywhere present so monstrous an absurdity?

But the circumstances connected with this removal are themselves proof positive of a criminal purpose. Upon the twelfth of August, 1867, the President suspended the Secretary of War and appointed General Grant the *ad interim* Secretary. This suspension purported to be in conformity to the law, and was acquiesced in. Under the provisions of the second section of the "tenure act," this removal was reported to the Senate within twenty days after its next meeting. The reasons assigned by the President were duly considered by the Senate, and the following resolution communicated to the President as their decision:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
January 13, 1868.

Resolved, That, having considered the evidence and reasons given by the President in his report of the 12th of December, 1867, for the suspension from the office of Secretary of War of Edwin M. Stanton, the Senate do not concur in such suspension.

Attested:

The law says in such case, "but if the Senate shall refuse to concur in such suspension, such officer so suspended shall resume the functions of his office, and the powers of the person so performing its duties shall cease." The Secretary *ad interim* vacated the office accordingly, and the suspended Secretary resumed his duties. I will not stop now to speak of the unmanly and disgraceful attempt made by the President and his cabinet cabal to trick the General-in-chief into a violation of the law and to force upon Mr. Stanton the alternative of submitting to an indirect removal from office under cover of his suspension, or resorting to legal proceedings through the courts, which could not

possibly have ended during the present administration. The history of all criminals illustrates a constant struggle between crime and cowardice—the desire to commit the crime and the fear of the consequences that may follow. The criminal intent to disregard the law was never more manifest in the mind of the accused than at this time; but his dread of punishment deterred him from the overt act. The answer of the respondent and the proofs spread upon the record show that from the 13th of January to the 21st of February he was scheming and devising means to thwart the vote of this Senate and to dispossess the Secretary of War in disregard of the law, and yet to evade, if possible, the punishment consequent upon its violation. The law told him if he should remove the Secretary he must do so "by and with the advice and consent of the Senate." He knew by the previous vote of that body that no such "advice and consent" would be given. He, therefore, not only admonished by the Senate but directed by the law, usurped a power nowhere given, and issued his mandate accordingly. With what effrontery then comes in the plea that his only motive was to innocently assert his prerogatives? Was the War Department to be made a mere plaything in the hands of the Executive? Was the machinery of that vast department to halt and its chief officer to subject himself to a trial for neglect of duty, while Mr. Johnson would amuse himself with preparing a case for the courts? Did he not know that the law enjoined duties upon the Secretary which he could not lay aside? Could he have for a moment supposed that that officer would tamely submit to an order for removal in which he had every reason to believe the Senate would not concur? No, sir; he comprehended fully the length and breadth of the offence he was then committing. He saw then, as plainly as he sees now, what would be the legal consequences of his act, and only hoped to shield himself behind that forbearance which he had mistaken for cowardice on the part of the representatives of the people.

But, Mr. President and Senators, this inquiry is relieved of all doubts; the question is *res adjudicata*, and I have simply to read the decision rendered upon the same day this high-handed attempt at usurpation was made:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
February 21, 1868.

Whereas the Senate have received and considered the communication of the President stating that he had removed Edwin M. Stanton, Secretary of War, and had designated the Adjutant General of the army to act as Secretary of War *ad interim*: Therefore,

Resolved by the Senate of the United States, That, under the Constitution and laws of the United States, the President has no power to remove the Secretary of War and to designate any other officer to perform the duties of that office *ad interim*.

REMARKS UPON ARTICLE SECOND.

Let us pass to notice briefly article second. The respondent is here charged with violating the tenure-of-office act in the appointment of Lorenzo Thomas as Secretary of War on the 21st day of February, 1868, there being no vacancy in said office. The letter of appointment is as follows:

EXECUTIVE MANSION, WASHINGTON, D. C.,
February 21, 1868.

SIR: Hon. Edwin M. Stanton having been this day removed from the office as Secretary for the Department of War, you are hereby authorized and empowered to act as Secretary of War *ad interim*, and will immediately enter upon the discharge of the duties pertaining to that office.

Mr. Stanton has been instructed to transfer to you all the records, books, papers, and other public property now in his custody and charge.

Respectfully yours,

ANDREW JOHNSON.

Brevet Major General LORENZO THOMAS,
Adjutant General U. S. Army, Washington, D. C.

This appointment was made simultaneously with the removal of Mr. Stanton;

it was made with the full knowledge that no vacancy existed, and that the Senate had so decided; it was made in defiance of all those repeated warnings to which I have alluded—that the Congress of the United States would regard the act as an open violation of law; it was made with every reasonable apprehension on his part that it would lead almost inevitably to his impeachment. Indeed, in this act, as well as others now laid to his charge, he seems not only to have defied, but to have courted impeachment.

The law told him here, as plainly as it told him in the matter of removal, that his act was denounced as a high misdemeanor in office. It told him more. It said to the person who would accept such appointment and attempt to discharge duties under it, would thereby himself commit a high misdemeanor in office. This respondent was therefore guilty of the double crime of himself violating the law and inducing others to join him in the criminal act. Section six of the tenure act says:

> Every removal, appointment, or employment made, had, or received, contrary to the provisions of this act, and the making, signing, sealing, countersigning, or issuing of any commission or letter of authority for or in respect to any such appointment or employment, shall be deemed and are hereby declared to be high misdemeanors.

What defence is made for the palpable violation of the law now shown? The respondent goes back to the act of February 13, 1795, and rests his case upon that law, which provides as follows, (p. 415, 1 Statutes at Large:)

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in case of vacancy in the office of Secretary of State, Secretary of the Treasury, or of the Secretary of the Department of War, or of any officer of either of the said departments whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancy be filled: *Provided*, That no one vacancy shall be supplied, in manner aforesaid, for a longer term than six months.

But by the very terms of the act of 1795, this respondent can there find no defence; that law says, "*in case of vacancy in the office of Secretary of the Department of War*, whereby he cannot perform the duties of said office, it shall be lawful for the President to authorize any person to perform its duties." We see, then, *there must be a vacancy* in the office, or a disability on the part of the Secretary to act, before the President can make such an appointment. There was neither a vacancy nor a disability existing at the time Lorenzo Thomas was appointed. This respondent, then, has not only violated the tenure act, but he has violated the very law under which he claims immunity. Nothing can be plainer, and nothing exhibits more strongly the utter hollowness of his defence.

ARTICLE THIRD.

The next and third article charges the President with a violation of the Constitution of the United States in the appointment of Lorenzo Thomas as Secretary of War while the Senate was in session, no vacancy having occurred during the recess of the Senate, and no vacancy existing at the time. The facts alleged are not controverted; the question presented to the Senate under this article involves the proper construction of our fundamental law. I have previously addressed myself to the Senate upon this subject, and will not again enter upon it.

The line of inquiry is very simple. If this accused has violated a law constitutionally enacted, then has he violated the Constitution itself. He has sworn to support the Constitution, and by that oath he is enjoined to "take care that the laws are faithfully executed." He cannot support the Constitution

and defy the laws enacted pursuant to it, any more than he can execute the laws faithfully and violate the Constitution. The duties are blended, and he cannot violate one without violating the other. If he be guilty under either the first or second article, he is guilty of the offence charged in the third.

ARTICLES FOURTH, FIFTH, SIXTH, AND SEVENTH.

The four succeeding charges allege conspiracy between the respondent and Lorenzo Thomas, and others unknown:

First. By force, intimidation and threats unlawfully to hinder Edwin M. Stanton, then Secretary of War, from holding said office, contrary to the provisions of an act to prevent and punish certain conspiracies, approved July 31, 1861.

Second. To prevent and hinder the execution of an act regulating the tenure of certain civil offices, passed March 2, 1867, by attempting unlawfully to prevent Edwin M. Stanton, then Secretary of War, from holding said office.

Third. By force to seize, take, and possess the property of the United States in the Department of War, then and there in the custody of Edwin M. Stanton, Secretary of the Department of War, contrary to an act to define and punish certain conspiracies, approved July 31, 1861.

Fourth. To seize, take, and possess the property of the United States in the Department of War, and in custody of said Stanton, with intent to disregard and violate an act regulating the tenure of certain civil offices, passed March 2, 1867.

That part of the conspiracy act which defines the offences here charged is as follows:

> That if two or more persons, within any State or Territory of the United States, shall conspire together * * * to oppose by force the authority of the government of the United States, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States against the will or contrary to the authority of the United States, or by force or intimidation or threat to prevent any person from accepting or holding any office, or trust, or place of confidence under the United States, each and every person so offending shall be guilty of a high crime.

The acts which he has himself admitted to have done, and those proved against him by the undisputed testimony of witnesses, bring his conduct within the letter of the law. No other result could have followed his conduct—it tended *directly* to "hinder and delay the execution of" the tenure act. He had no other purpose than to "seize, take, and possess the property of the United States in the War Department," against the will and contrary to the authority of the United States, then in the lawful custody of the Secretary of War, and as placed there by the highest authority in the land. And it is equally evident that his design was to prevent Edwin M. Stanton from holding the office to which he had been legally appointed, and from which he had not been and could not be legally removed. We are not, then, to inquire at this time whether he is guilty of a high misdemeanor in doing these things, which have been made the *gravamen* of the first three articles; but we are to see whether he has unlawfully conspired, by force, or intimidation, or threat, to attempt the accomplishment of these objects.

What are the evidences of a conspiracy? It may be well first to inquire, what is a conspiracy? Under articles fourth and sixth we are confined in our definition to a conspiracy or agreement by force to do the things alleged. Under the fifth and seventh articles of impeachment the broader rule of the common law is applicable. Leaving the discussion of those articles for their proper place, let us inquire whether there is a conspiracy proved in violation of the act of 1861. To determine this, there must be grouped about the accused all the circumstances tending to explain his conduct.

From the very nature of the crime its perpetrators would carefully abstain from

leaving any trace of their original purpose. We are, then, to scan the circumstances surrounding the transaction; we are to inquire into the character of the act to be performed, the means and the instrument employed, the declarations of the conspirators before and since, the mind and temper of the accused, as well as his co-conspirators, and everything that can throw light upon their motives and intentions. What are these circumstances, acts, and declarations?

Here we find the unmistakable declaration of one of the conspirators that he intended to use force; that should the doors of the department be barred against him he would break them down. When he made this declaration he had been once refused possession, and if any one thing appear more clearly than another in the testimony, it is that he fully anticipated a forcible contest in order to succeed. He was clothed with ample authority by the President to do this. It will not do to say that General Thomas's order was in the usual form, and therefore the President only expected of him the usual compliance with the order, for Thomas knew that not only in the opinion of his General-in-chief and the rightful Secretary of War, but in the solemnly declared judgment of Congress, that order was but blank paper; when, therefore, we find him declaring a purpose to resort to force, he only stated what was necessary to make the order of the slightest use. No one knew better than Thomas the consequences of even accepting such an order, and the mere agreement between the President and himself, the one to issue the order and the other to accept it and to enter upon its execution, both knowing it to be unlawful, is of itself enough to hold both responsible for the manner in which either attempted to execute it. But his conversation with Mr. Burleigh was not merely the idle talk of a garrulous old man, drawn out of him by an inquisitive interlocutor, for we find that on the same day, and previous to his conversation with Burleigh, he had a conversation with Samuel Wilkinson, in which, after some hesitation, he told that witness substantially the same thing, on two different occasions.

I quote briefly from his testimony, pp. 212, 213:

The WITNESS. I asked him to tell me what had occurred that morning between him and the Secretary of War in his endeavor to take possession of the War Department. He hesitated to do so till I told him that the town was filled with rumors of the change that had been made, of the removal of Mr. Stanton and the appointment of himself. He then said that since the affair had become public he felt relieved to speak to me with freedom about it. He drew from his pocket a copy, or rather the original, of the order of the President of the United States, directing him to take possession of the War Department immediately. He told me that he had taken as a witness of his action General Williams, and had gone up into the War Department and had shown to Edwin M. Stanton the order of the President, and had demanded, by virtue of that order, the possession of the War Department and its books and papers. He told me that Edwin M. Stanton, after reading the order, had asked him if he would allow to him sufficient time for him to gather together his books, papers, and other personal property and take them away with him; that he told him that he would allow to him all necessary time to do so, and had then withdrawn from Mr. Stanton's room. He further told me, that day being Friday, that the next day would be what he called a *dies non*, being the holiday of the anniversary of Washington's birthday, when he had directed that the War Department should be closed; that the day thereafter would be Sunday, and that on Monday morning he should demand possession of the War Department and of its property, and if that demand was refused or resisted he should apply to the General-in-chief of the army for a force sufficient to enable him to take possession of the War Department; and he added that he did not see how the General of the army could refuse to obey his demand for that force. He then added that under the order that the President had given to him he had no election to pursue any other course than the one that he indicated; that he was a subordinate officer directed by an order from a superior officer, and that he must pursue that course.

Here we find, not only the purpose to use force distinctly declared, but that, under the "order the President had given him, he had no election to pursue any other course." I ask, how he could have spoken truthfully and have made any other declaration, when it is patent that no other course could have been successful? It does not seem to me that this view of the case could be made to appear more clear by illustration; and yet let me put a parallel case.

Suppose Andrew Johnson had determined to possess himself of the Capitol with a view of ousting Congress, and had directed the Speaker of the House of Representatives and the President of the Senate to turn over all the records, and had directed Thomas to take immediate possession. Such an order would be no less unlawful, in one view of the tenure act, than the one he gave. Could anybody doubt that such an order would mean revolution, and that a clash of arms must follow if it were executed; and, if such thing followed, that Mr. Johnson would be directly chargeable with the consequences? Would not *force* appear all over the order, though the word were not written? If the officer charged with executing such order declared, after receiving it, that he intended to use force, would any sane man set up that the President must not be held accountable for the declarations of such officer, when they were declarations showing the only means of accomplishing the object? Let me ask wherein this hypothetical case is not covered by that at bar? Mr. Stanton was intrenched behind the law as securely as is Congress; he had frequently declared that he would not yield except to superior force. I say, then, that when the President ordered Thomas to take immediate possession of the War Department, he gave him a *carte blanche* to do whatever he thought necessary to accomplish his purpose, and Thomas only echoed his co-conspirator when he talked with Burleigh and Wilkeson. But General Thomas not only communicated his purpose to Burleigh, but he afterwards told this witness why he had not executed his plan. Witness says (page 210) that he (Thomas) told him that the only thing that prevented his taking possession of the War Department on the morning he had invited Burleigh to be present, was because of his arrest by the United States marshal at an unusually early hour. At this point, before noticing the attempt of Thomas to seize the War Department on the morning of the 22d of February, I desire to call attention to a fact in evidence showing a perfect concurrence of mind between the President and his co-conspirator, Thomas. On the morning of the 22d the President's private secretary addressed a note, by direction of the President, to General Emory, in command of the military forces of the department. General Emory responded in person, and met the President about the same hour that Thomas entered the War Department. That interview is made the subject-matter of a separate article, and I will not give it at length in this place. But I urge that no man can read General Emory's narrative of what then transpired in the light of the circumstances surrounding this case, and not feel himself driven to the conclusion that the President meant to use the military force of this department through that officer to carry out his unlawful design; and nothing but the indirect rebuke administered by General Emory, and his avowed purpose made to the President to obey no orders except they should come through the General-in-chief, as by law provided, deterred the accused from then and there directing him to marshal his forces, if necessary, for the expulsion of Mr. Stanton.

While this remarkable scene was transpiring in the Executive Mansion, another not less remarkable was being enacted by the tool of the President at the War Department. There were many witnesses present, most of whom have testified. As they concur substantially in their testimony, I will give that of but one of them, Hon. Thomas W. Ferry. (See page 225.)

In the presence of Secretary Stanton, Judge Kelley, Moorhead, Dodge, Van Wyck, Van Horn, Delano, and Freeman Clarke, at twenty-five minutes past twelve m., General Thomas, Adjutant General, came into this Secretary of War office, saying, "Good morning," the Secretary replying, "Good morning, sir." Thomas looked around and said, "I do not wish to disturb these gentlemen, and will wait." Stanton said, "Nothing private here; what do you want, sir?"

Thomas demanded of Secretary Stanton the surrender of the Secretary of War office. Stanton denied it to him, and ordered him back to his own office as Adjutant General. Thomas refused to go. "I claim the office of Secretary of War, and demand it by order of the President."

STANTON. "I deny your authority to act, and order you back to your own office."

THOMAS. "I will stand here. I want no unpleasantness in the presence of these gentlemen."

STANTON. "You can stand there if you please, but you cannot act as Secretary of War. I am Secretary of War. I order you out of this office and to your own."

THOMAS. "I refuse to go, and will stand here."

STANTON. "How are you to get possession; do you mean to use force?"

THOMAS. "I do not care to use force, but my mind is made up as to what I shall do. I want no unpleasantness, though. I shall stay here and act as Secretary of War."

STANTON. "You shall not, and I order you, as your superior, back to your own office."

THOMAS. "I will not obey you, but will stand here and remain here."

STANTON. "You can stand there, as you please. I order you out of this office to your own. I am Secretary of War, and your superior."

Thomas then went into opposite room across hall (General Schriver's) and commenced ordering General Schriver and General E. D. Townsend. Stanton entered, followed by Moorhead and Ferry, and ordered those generals not to obey or pay attention to General Thomas's orders; that he denied his assumed authority as Secretary of War *ad interim*, and forbade their obedience of his directions. "I am Secretary of War, and I now order you, General Thomas, out of this office to your own quarters."

THOMAS. "I will not go. I shall discharge the functions of Secretary of War."

STANTON. "You will not."

THOMAS. "I shall require the mails of the War Department to be delivered to me, and shall transact the business of the office."

STANTON. "You shall not have them, and I order you to your own office."

Gentlemen of the Senate, was this the method of executing an ordinary command of an officer delivered to him for an ordinary purpose? Did Thomas assume this belligerent attitude and enter upon this despicable business in such violent manner without having been instructed to do so, if necessary, by the man whose orders he was executing? Is it not probable that at the very moment he was bullying the Secretary of War, and ordering General Schriver and General Townsend to recognize him as the rightful secretary, he was expecting the force necessary to maintain his authority from General Emory, who, he thought, was receiving instructions from the President to that effect? Sirs, this coincidence and concurrence of action between the President and Thomas on that morning is susceptible of no reasonable solution, other than that they meditated the use of force, and were availing themselves of every possible means to obtain it.

Now, sirs, I do not desire to pursue this inquiry further. If there was a conspiracy between these parties to take possession of the War Department by force, as I think has been fully shown by the evidence at this trial, then that conspiracy must be held to extend necessarily to the charges laid in the fourth and sixth articles, and they need not be separately discussed.

I will now briefly notice the charge laid in articles fifth and seventh. The President is here charged with conspiring with Lorenzo Thomas and others unknown to seize, take, and possess the property of the United States in the Department of War, and to hinder and prevent Edwin M. Stanton, the Secretary of said department, from holding his said office; this in violation of the civil tenure act. In these charges there is no allegation of force being meditated, as was necessary in alleging the violation of the conspiracy act. The offence charged, then, consists simply in an agreement to do an unlawful act in an unlawful manner. It does not matter what means were contemplated, nor what used. It is enough to know that the act and the manner of its accomplishment were unlawful.

The evidence already adduced, and the laws cited, show that at the time that the accused attempted Mr. Stanton's removal he was lawfully in possession of his office. The evidence and the laws noticed also show that the accused had exhausted every legal means to remove Mr. Stanton. I say, then, that Mr. Johnson could take no step beyond these, which would not in itself be an unlawful act. There was no way to remove Mr. Stanton against his will, and without the advice and consent of the Senate, except by resort to unlawful means. If he is proved to have attempted this by concert or agreement with one or more, he is guilty of a conspiracy so to do. There is, sirs, an unwarranta-

ble attempt to throw around this charge of conspiracy a meaning which it has not in law, to clothe this offence with something abhorrent to public sentiment; and we are told that persons may be jointly engaged in the most heinous crimes, and yet we must be cautious before convicting them of a conspiracy. This is an appeal to popular prejudice; and is nowhere to be derived from the books or decisions upon criminal law. The accused could not himself carry out his unlawful purpose; he was forced to select an accomplice. He made that selection, the agreement was entered into, the requisite order issued, the two minds met, and one of the parties entered upon the design to be accomplished, and that design being an unlawful one, the conspiracy was complete. The tenure of office act, in its fifth and sixth sections, denounces as a high misdemeanor the very acts which are proved to have been committed by the President. Were it not for the rule of law which protects him while in his high office from a criminal prosecution before a jury of his countrymen, he could upon his own answer be convicted and sentenced to imprisonment. And so, also, could Lorenzo Thomas. How then can he escape conviction before this court which can properly try him, simply because he has united with one or more persons to commit the offence? All the evidence which has been presented under the fourth and sixth articles applies with greater weight to the fifth and seventh. And should it be found not to establish that he conspired by *force* to remove Mr. Stanton, it by no means follows that he did not conspire at all. It would seem to me a work of supererogation to add to the grouping of guilty circumstances already given to intensify the proofs of complicity.

The accused has admitted in his answer that on and before August 5, 1867, "he became satisfied that he could not *allow* the said Stanton to continue to hold the office of Secretary of the War Department;" * * "that he did necessarily consider and *determine* that the said Stanton ought no longer to hold the said office;" * * "and to give effect to such his decision and *determination*, he did address the said Stanton a note, &c., following:

"SIR: Public considerations of a high character constrain me to say that your resignation as Secretary of War will be accepted."

To which Mr. Stanton on the same day said: "In reply I have the honor to say, that public considerations of a high character, which alone have induced me to continue at the head of this department, constrain me not to resign the office of Secretary of War before the next meeting of Congress."

Here was the first step pursuant to the plan to dispossess Mr. Stanton peaceably if he could, forcibly if he must. Here he was plainly told that only by resort to the latter means would the Secretary yield. The answer tells us he was forced to consider what "acts could be done to cause the said Stanton to *surrender* the said office." Surrenders, Mr. President, do not often precede force. They usually follow not only its exhibition but its application.

The tenure act pointed out but one way, and Mr. Stanton having declined to resign, that law pointed out the only peaceable way.

He next, on the 12th of August, seven days after Mr. Stanton refused to resign, appointed General Grant *ad interim*, and suspended Mr. Stanton; but this was but of temporary duration, for the Senate refused to concur, and Mr. Stanton resumed his functions of office.

Here ended all legal means; here ended all peaceable means; this exhausted every resort except to force, and this he prepared himself to use. He says the next step, although a violation of the law, was taken to raise a question for the courts. This will not do. He had been told in plainest terms by Mr. Stanton that he would not resign; he had been told by that officer that he yielded to superior force in the matter of his suspension, and he knew that the Senate had practically instructed Mr. Stanton that no attempt at removal by unlawful means would be sustained by them. We have Mr. Johnson, then, brought to an

alternative which had but one solution in his mind, and that he had already determined upon, viz: to remove Mr. Stanton at all hazards.

To raise a question for the courts forsooth! He could not do this, and he well knew it, except by committing a trespass upon the bailiwick of Mr. Stanton, by law assigned him, and when within his office by forcibly ejecting him therefrom. If, sirs, his design was not to go this far, still if it included a purpose to establish a second Secretary of War in that building, and require the subordinates to obey the orders of the pretended Secretary, this was force in the meaning of the act. We are bound to infer that when Mr. Johnson sat out to accomplish an object which he had every reason to believe would be successful only upon the application of force, he meditated that force; and whether he subsequently went to that extreme does not matter; the offence is complete without it. But what did he do? Having failed to secure the General-in-chief as a tool, he selected an officer of the army, who was nominally Adjutant General, but whom neither Mr. Lincoln while he was President, nor Mr. Stanton, would trust in charge of the Adjutant General's department. The respondent peremptorily ordered the General-in-chief to reinstate this man, knowing that he could not show a greater contempt for Mr. Stanton's authority than to thrust upon that department an officer whom Mr. Stanton himself had suspended from his duties. He had still another motive; the office of the Adjutant General was in the same building with that of the Secretary of War, and the ulterior purpose to possess himself of the entire building was thus to be more readily accomplished. On the 21st of February General Thomas was directed to take immediate possession of the War Department. He went accordingly, and demanded the office. It is in evidence that on that same day the Senate, upon information furnished them by the Secretary of War, passed a resolution declaring the attempted removal of Mr. Stanton a violation of the Constitution and the laws, and that resolution upon the same day was placed in the hands of the accused and his co-conspirator Thomas. Not only this: they both knew that the House of Representatives had, in view of this removal, entered seriously upon the consideration of this respondent's impeachment. With these proceedings well understood, with the consequences certain to await the accused and his co-conspirators, the order to Thomas is not countermanded, nor are his instructions changed, but the plan originally entered upon is attempted to be carried out without the slightest deviation, as we learn from Thomas's testimony, and with the plan fresh in his mind as laid before him by the accused, Thomas, on that same night stated to Mr. Burleigh, what he was going to do. Let me give a portion of Burleigh's testimony, pp. 201–2.

A. On the evening of the 21st of February last, I learned that General Thomas had been appointed Secretary of War *ad interim*, I think while at the Metropolitan Hotel. I invited Mr. Leonard Smith, of Leavenworth, Kansas, to go with me up to his house and see him. We took a carriage and went up. I found the general there getting ready to go out with his daughters to spend the evening at some place of amusement. I told him I would not detain him if he was going out; but he insisted on my sitting down, and I sat down for a few moments. I told him that I had learned he had been appointed Secretary of War. He said he had; that he had been appointed that day, I think; that after receiving his appointment from the President he went to the War Office to show his authority or his appointment to Secretary Stanton, and also his order to take possession of the office: that the Secretary remarked to him that he supposed he would give him time to remove his personal effects or his private papers, something to that effect; and his reply was "Certainly." He said that in a short time the Secretary asked him if he would give him a copy of his order, and he replied "Certainly," and gave it to him. He said that it was no more than right to give him time to take out his personal effects. I asked him when he was going to assume the duties of the office. He remarked that he should take possession the next morning at 10 o'clock, which would be the 22d; and I think in that connection he stated that he had issued some order in regard to the observance of the day; but of that I am not quite sure. I remarked to him that I should be up at that end of the avenue the next day, and he asked me to come in and see him. I asked him where I would find him, and he said in the Secretary's room, up stairs. I told him I would be there. Said he, "Be there punctual at 10 o'clock." Said I, "You are going to take possession to-morrow?" "Yes." Said I, "Sup-

pese Stanton objects to it—resists?" "Well," said he, "I expect to meet force by force," or "use force."

Mr. CONKLING. Repeat that.

The WITNESS. I asked him what he would do if Stanton objected or resisted? He said he would use force or resort to force. Said I, "Suppose he bars the doors?" His reply was, "I will break them down" I think that was about all the conversation that we had there at that time in that connection.

I have not noticed the sending for General Wallace, the officer second in command of this military department, after the President had failed in his attempted seduction of General Emory. I have not noticed the frequent declarations of the co-conspirator Thomas, showing that, up to the time this trial was entered upon, he had not desisted from his purpose to possess himself of the War Department; that he is, in violation of any other theory than that he is, and has been since his appointment, in perfect accord and agreement with the President, received into cabinet councils and official communication with the President as Secretary of War; that he has certified papers, one of which is in evidence, as Secretary of War; and in them at least, if not practically, is to-day by recognition and order of the President a *de facto* Secretary of War.

But, sirs, casting aside all evidence introduced by the prosecution, and looking at the charge of conspiracy in light of the testimony which the answer furnishes, there is left us but one of two conclusions: either that this accused and General Thomas are fully sustained by the law in what they did and attempted to do, or they are both guilty, and the one now on trial must be convicted.

I will not here stop to notice the charges laid in article eighth. The offence does not materially differ from that laid in the second and third articles.

ARTICLE NINTH.

We are brought, then, to notice article ninth, which charges that the accused instructed General Emory that the act of Congress approved March 2, 1867, was unconstitutional and in contravention of commission of the said Emory, with intent to induce him, in his official capacity as commander of the military forces of this department, to violate the provisions of that act, and with the further intent thereby to enable the accused to prevent the execution of the tenure act, and also prevent Edwin M. Stanton, the Secretary of War, from discharging the duties of his office by virtue thereof. It would be difficult to read General Emory's testimony under this charge, if it stood unconnected with any other evidence, and not conclude that he was sent for by the President with a view to counsel a violation of this law.

This testimony is brief, and I crave the indulgence of the court to read it as given upon the record. General Emory was summoned by the President's private secretary. The note sent him and his testimony I will now read.

General Emory's testimony, pages 227, 228, and 229:

"EXECUTIVE MANSION, WASHINGTON, D. C.,
"*February* 22, 1868.

"GENERAL: The President directs me to say that he will be pleased to have you call on him as early as practicable.

"Very espectfully and truly, yours,

"WILLIAM G. MOORE,
"*United States Army.*"

Q. How early did you call?—A. I called immediately.

Q. How early in the day?—A. I think it was about mid-day,

Q. Whom did you find with the President, if anybody?—A. I found the President alone when I first went in.

Q. Will you have the kindness to state as nearly as you can what took place there?—A. I will try and state the substance of it, but the words I cannot undertake to state exactly. The President aske me if I recollected a conversation he had had with me when I first took command of the department. I told him that I recollected the fact of the conversation distinctly. He then asked me what changes had been made. I told him

no material changes; but such as had been made I could state at once. I went on to state that in the fall six companies of the twenty-ninth infantry had been brought to this city to winter; but, as an offset to that, four companies of the twelfth infantry had been detached to South Carolina, on the request of the commander of that district; that two companies of artillery, that had been detached by my predecessor, one of them for the purpose of aiding in putting down the Fenian difficulties, had been returned to the command; that, although the number of companies had been increased, the numerical strength of the command was very much the same, growing out of an order reducing the artillery and infantry companies from the maximum of the war establishment to the minimum of the peace establishment. The President said, "I do not refer to those changes." I replied that if he would state what changes he referred to, or who made the report of the changes, perhaps I could be more explicit. He said, "I refer to recent changes, within a day or two," or something to that effect. I told him I thought I could assure him that no changes had been made; that, under a recent order issued for the government of the armies of the United States, founded upon a law of Congress, all orders had to be transmitted through General Grant to the army, and, in like manner, all orders coming from General Grant to any of his subordinate officers must necessarily come, if in my department, through me; that if, by chance, an order had been given to any junior officer of mine, it was his duty at once to report the fact. The President asked me, "What order do you refer to?" I replied, "To Order No. 17 of the series of 1867." He said, "I would like to see the order," and a messenger was despatched for it. At this time a gentleman came in who I supposed had business in no way connected with the business that I had in hand, and I withdrew to the further end of the room, and while there the messenger came with the book of orders, and handed it to me. As soon as the gentleman had withdrawn I returned to the President, with the book in my hand, and said I would take it as a favor if he would permit me to call his attention to that order; that it had been passed in an appropriation bill, and I thought it not unlikely had escaped his attention. He took the order and read it, and observed, "This is not in conformity to the Constitution of the United States, that makes me Commander-in-chief, or with the terms of your commission."

Mr. HOWARD. Repeat his language, if you please.

The WITNESS. I cannot repeat it any nearer than I am now doing.

Mr. CONKLING. Repeat your last answer louder, so that we may hear.

Mr. JOHNSON. What he said.

The WITNESS. What who said, the President or me?

Mr. HOWARD. The President.

The WITNESS. He said, "This is not in conformity with the Constitution of the United States, which makes me Commander-in-chief, or with the terms of your commission." I replied, "That is the order which you have approved and issued to the army for our government," or something to that effect. I cannot recollect the exact words, nor do I intend to quote the exact words, of the President. He said, "Am I to understand that the President of the United States cannot give an order except through the General of the army," or "General Grant?" I said, in reply, that that was my impression; that that was the opinion that the army entertained, and I thought upon that subject they were a unit. I also said, "I think it is fair, Mr. President, to say to you that when this order came out there was considerable discussion on the subject as to what were the obligations of an officer under that order, and some eminent lawyers were consulted—I myself consulted one—and the opinion was given to me decidedly and unequivocally that we were bound by the order, constitutional or not constitutional." The President observed that the object of the law was evident.

Mr. Manager BUTLER. Before you pass from that, did you state to him who the lawyers were that had been consulted?—A. Yes.

Q. What did you state on that subject?—A. Perhaps, in reference to that, a part of my statement was not altogether correct. In regard to myself, I consulted Mr. Robert J. Walker.

Q. State what you said to him, whether correct or otherwise?—A. I will state it. I stated that I had consulted Mr. Robert J. Walker, in reply to his question as to whom it was I had consulted; and I understand other officers had consulted Mr. Reverdy Johnson.

Q. Did you say to him what opinion had been reported from those consultations?—A. I stated before that the lawyer that I had consulted stated to me that we were bound by it undoubtedly; and I understood from some officers, who I supposed had consulted Mr. Johnson, that he was of the same opinion.

Q. What did the President reply to that?—A. The President said, "The object of the law is evident." There the conversation ended by my thanking him for the courtesy with which he had allowed me to express my own opinion.

Q. Did you then withdraw?—A. I then withdrew.

I have said that this testimony, standing alone, bears upon its face proof of guilt, but we are not permitted to view it from so narrow a standpoint. It is illumined from many sources, and is given a significance not be misunderstood. There is scarcely a scene or act connected with this remarkable drama of Executive usurpation which does not explain this attempt to alienate a gal-

lant officer from his General-in-chief, and stamp it as scarcely less infamous than the attempt previously made to alienate the General-in-chief from the whole loyal people of the land.

Sirs, there is not in this the naked procuration to violate law but a treasonable attempt to poison the mind of a high army officer to sow dissension, insubordination, and treachery in the army. This too, sirs, from the commander-in-chief. Such conduct in an officer or soldier is, by the articles of war, punishable with death. Scores of soldiers have paid this penalty for mutinous conduct not half so aggravating. The moral sense not only of the army but of the country must be shocked at such an exhibition from a chief magistrate; and, sirs, I will be pardoned for saying that General Emory never did a more heroic act than when he spurned the treacherous offer of high command which he knew would await him should he lend himself to the conspiracy already hatched by the President.

Now, sirs, how is this extraordinary interview explained by the accused? He says in his answer that his purpose was to ascertain what changes had been made in the military affairs of this department. That may have been one of his motives, but is it to be believed for a moment that this was all? To do this we must shut our eyes to all the cumulative evidence in this case. No one was threatening to use force against Mr. Johnson. There was no effort being made to oust him from office by force. He had nothing to apprehend from the military forces of this department. There was no unusual excitement anywhere in the country that made it necessary for him to marshal these forces. The only thing, sirs, which he had any reason to apprehend might happen, was, that in the event he persisted in his design to execute his order to remove the Secretary of War, this military force might not be found subservient to his wishes. And here we have a key which unlocks his treasonable designs. Here we have his motive made plain as the sunlight. He could not, by open confession, disclose more certainly what was intended by him when he summoned General Emory to his presence. It was not a proper question to ask that officer, when upon the witness stand, what he understood the President to mean by that cabalistic manner with which he introduced the subject of recent changes in the military forces made within a day or two. That is a question for you, senators, to answer. General Emory could have answered it but one way. But let us see whether the turn which the conversation took does not of itself show the leading motive which the President had in mind. General Emory had responded fully as to the question put him; and assured the President that there had been no recent changes, and could be none (under the law and orders) without General Emory's first knowing it. There the conversation ought to have ended if the President's answer is held to disclose the whole truth. General Emory read to him the law by which he was guided, and the President himself took it and read it, and immediately observed:

This is not in conformity with the Constitution of the United States, which makes me Commander-in-chief, or with the terms of your commission.

General Emory replied, speaking of the order which promulgated that law:

That is the order which you have approved and issued to the army for our government.

The Commander-in-chief being thus baffled by his subordinate, made this reply:

Am I to understand that the President of the United States cannot give an order except through the General of the army, or General Grant?

This last answer is a complete portraiture of the President's motives, and his disappointment in not finding in Emory a willing tool through whom he might prosecute his designs. To put this in other phrase it would read:

Then, General Emory, I am to understand you will not obey my orders unless I communicate them through General Grant?

General Emory felt himself called upon to say that with regard to this law the army were a unit. Of its meaning the President could have had no doubt, for after listening to General Emory a moment longer, he remarked, with apparent disappointment at the result of the interview, "the object of the law is evident," and they then separated.

When we remember that this is but one of the links in the chain being forged by the accused with which to manacle the Secretary of War and bind a great department of the government to the Juggernaut used by him to crush all opposition to executive will, the offence appears in hideous distinctness. That it was such a link to be thus used, I am forced to believe, and I leave it to await the judgment of this high court.

I am disinclined, after this protracted discussion, to dwell at any length upon the tenth and eleventh articles; and yet I beg not to be understood as derogating from their importance or their gravity. The accused is here charged not only with improprieties and indecencies of speech; he is not only called to answer intemperate, disgraceful, incendiary, and riotous language; but he is charged with following up the purposes avowed in these speeches by overt acts looking directly to the obstruction of the laws, which he had sworn to take care should be faithfully executed. If the conduct of this accused, in his official capacity, in word, act, and deed, has not shown conclusively his guilt under both of these articles, then there could be no proof adduced, however strong, that would be sufficient.

The proof does show his unlawful attempt to obstruct the laws as therein charged. I will not again do more than to ask your examination of the facts proved and found in the recorded testimony, which shows how eagerly he entered upon the dangerous business of obstructing and defying the laws of the country. As to his speeches, upon which the tenth article is based, look at them, read them; there they stand in history as a monument of his everlasting disgrace. The great labor of explaining and justifying such speeches and conduct is certainly in able hands. It is defended and justified as one of the great privileges of the President of the United States to be guilty of such indecency, impropriety, vulgarity, profanity, and impiety of speech as to offend the moral sense of the whole people. It is for them to show how far the liberty of indecent speech in a high official may be indulged before it reaches that unwarrantable license where the only power that can *will* step in and correct the wrong. The idea that a President may so demean himself by indecent speech as to make him a scoff and byword, and place himself so low in the moral scale that none "would stoop to touch his loftiest thought," and yet not be guilty of such misdemeanors as would call for the very action we have taken, is beyond my ken.

> "O Judgment thou art fled to brutish beasts,
> And men have lost their reason."

The defence have not, by their evidence, contradicted what we have proven, but have only strengthened our case. There has been no proof adduced on the part of the defendant that either will justify or excuse his unlawful acts. The evidence of General Sherman, and all others put on the stand by the defence, only make his guilt the more manifest. The attempt by documentary evidence to prove the practice of the government to justify his act proves that the practice has been to obey the law and not violate it, as all appointments and removals proved have been made under some existing law, either the laws of 1789, 1795, 1820, 1856, or some authority in law upon which the act was based. But suppose every other administration had violated the law; would that justify the violation of a positive enactment making its violation a crime or misdemeanor? Certainly not. If so, a murderer might justify his murder on the grounds that murders were common in the country from the commencement of the govern-

ment to the present time. Even the advice of his Cabinet cannot excuse him. By advising a crime they cannot shield their chief, but may be impeachable themselves for advising a disobedience of law. But it is all of record, and I will not pursue it further. We have laid bare his offences. In all that has been proven, or aught of his conduct since President, which is a matter of history, there is not to be found a good motive for his conduct. He is found without any of the elements necessary to fit him for any official position.

Goodness, clemency, and a proper liberality should be among the virtues that adorn a Chief Magistrate. With the aid of these, he should be able to greatly assist in the amelioration of the condition of the whole people. The chief end of all his actions should be to promote peace, safety, prosperity, and happiness to the nation.

This was the idea of the heathen philosophers; they defined a good prince as "one who endeavors to render his subjects happy;" "and a tyrant," on the contrary, "one who only aims at his own private advantage."

An example of the first we had in the lamented Lincoln, and of the latter in Mr. Johnson.

Mr. Lincoln was endowed with one of the most genial souls that heaven ever gave to man, and an intellect of most wonderful power. His apprehension was quick, his judgment sound, his conclusions correct. His mind was sufficiently capacious to comprehend all the vast range of thought to which occasion gave scope. He met the critical hour of duty to his country like a statesman and a man. He sustained loyalty, and gave all his strength in crushing treason. Instead of denouncing your Congress, he consulted and advised with them for the good of the country. Instead of vetoing every law, he aided and assisted in giving them force. Instead of openly violating the plain provisions of your enactments, he executed them faithfully, as was his duty.

How a government is to be administered while peace is smiling, is one thing, and how it is to be administered amidst the horrors of war, is quite another thing. Mr. Lincoln had wants hourly multiplying upon his hands that before or since were unheard of. The difficulties with which the war on our hands was complicated were almost interminable; but with each new-found difficulty he found *new strength*, *hope*, and *energy*, until all obstacles were overcome and the war ended. But at the very dawn of the nation's new birth, resting from his labors and contemplating that peace that was then breaking through the dark, angry clouds of war, he fell by the hands of an assassin.

Yes, his sun has set forever. Loyalty's gentle voice can no longer wake thrills of joy along the tuneless chords of his mouldering heart. Yet the patriots and lovers of liberty, who still linger on the shore of time, rise and bless his memory; and millions yet unborn will in after times rise up to deplore his fate, and cherish, as a household word, his deathless name.

Mr. President and Senators, what patriots that linger behind will rise up and bless the memory of Andrew Johnson? Who will in after times rise up to deplore the fate that now surely awaits him? Who will cherish as a household word his dishonored name? None, none, Mr. President; no, not one! No, sir; the virtues that should adorn a Chief Magistrate fled on the induction of this criminal into that high office. In sadness and sorrow did the people witness this man succeed to the executive chair—not by their spontaneous voice, not by their free accord, but by the ministration of the murderer's missive. They witnessed him, who had acquired power by such a sorrowful and inauspicious chance, bending blindly to the behests of those whose adherents, if not they themselves, had lately been in rebellious arms against that Constitution which he had sworn to protect and maintain. They saw him, flushed with arrogance and pride, despise the warnings of the people, and

deride the mandates of their legislators. When an act of the legislative department of the government would not inure to his advantage politically, they saw him openly violate and trample it under foot. When loyalty was supported and peace attempted to be perpetuated, they saw him disregard their will and throw all manner of obstructions in the way.

When the officers of the government would not bend the knee and cry "great and good prince," they saw him attempt to hurl them from his courts. When the commander of the army would not do his bidding, they have seen him conspire to destroy his good name and fame before the country. When the country was at ease, they have seen him give it grief and pain. When at peace and rest, they have seen his attempt to give it revolution and blood.

They saw him with a ruthless and heavy hand attempt to seize the nation's purse and the nation's sword, and thus by clutching in his longing grasp all the attributes of power, place himself in a condition where he might with safety announce his views and enforce his designs.

They felt the weight of his great office fall like an enshrouding pall over a suffering people. They marked with alarm and consternation his rapid strides to that point where his sway would have been autocratic and his reign irresistible. It was not alone by force that this was to be accomplished. By appeals which were designing, and all the more dangerous because of apparent candor, he drew to him the careless and unsuspecting. By pledges, all the more reprehensible because of plighted honor, he soothed the suspicions of the cautious and the wise. By profuse disposition of rewards in his hands, he gained the mercenary and attracted the unscrupulous; and where the pliant arts of flattery and persuasion failed to accomplish his intended views, by the stern show of his power and authority, he awed the timid and overbore the weak.

These, sirs, we have manifested, if by our proof we have made aught manifest. And to all this what does he reply? That, though his acts were bad, his motives were good; that, though his course was unlawful, his heart was well-meaning; that he trampled on the law, in order that he might uphold the law; that he disregarded his oath, the better to enable him to keep it. When we ask him why he set aside the law of the land, he replies that it was because it was opposed to the Constitution of the land; and when we again inquire as to the Constitution of the land, we are assured that it is his prerogative to construe it even in violation of the laws of the land. Have I stated this beyond the line of his defence? Have I wronged him by one unjust description of his conduct or his claim? If not, shall this state of things longer exist? Shall we snap the chains that bind us, or continue in them longer? Shall we vindicate the law, or crouch at the usurper's frown? Shall we vindicate to-day the principle that underlies the very foundation of this government, or allow the laws to be trampled under foot at the will of every tyrant?

It is a fundamental principle of this government that there shall be a known rule and law by which not only the conduct of the citizen, but all officers, including the Chief Magistrate of the nation, shall be regulated and governed. This is a government of laws and not of men. It is this principle which distinguishes this republican form of government of ours from the monarchies of the Old World.

I repeat, sirs, this is a government of laws and not of men. Never, before, I believe, was it known in this enlightened country that the executive head of the nation had the arrogance to take upon himself not only the executive but the judicial functions of the government. No, sir; under the smiles of that merciful Providence who had watched over and guided the destinies of the people, we have hitherto been exempt, and I trust in God shall hereafter continue to be, from the affliction of that most direful scourge, a Chief Executive with full discretionary powers to execute a law or declare it unconstitutional at will. It is not that which pleaseth nor that which is most consonant with the humor and

inclination of the President, but the law, which should be the rule of his conduct. I trust, sirs, that the time will never again come in the history of this nation when, by elevation to the Presidency, any one will become so infatuated as to imagine himself independent of that rule, or to set up his own private judgment or opinions as the only standard by which he will be guided or governed. Then, sirs, whether we shall in the future witness this attempt in other executives depends upon your decision upon the issues in this case involved. Being the grand tribunal from which there can be no appeal, you should properly reflect the law and the testimony. The pure stream of public justice should flow gently along, undisturbed by any false pretence on the part of the defendant, or false sympathy upon your part. The President should not be permitted to play the necromancer with this Senate as he did with the country through the law department of the executive branch of the government, whereby he raised a tempest that he himself could not control. Well might he have exclaimed—

"I am the rider of the wind,
The stirrer of the storm;
The hurricane I left behind
Is yet with lightning warm."

But, thanks to the wisdom of our far-seeing patriot sires, you, senators, are by our Constitution made the great power that shall calm the tempest and so direct the lightning that its strokes shall be warded off from the people and fall only upon the head of their oppressor.

Yes, senators, we fervently hope and confidently rely upon you to calm the storm, and prevent the Temple of Liberty being dashed to earth by the hurricane. We cannot, will not believe that we are or will be mistaken in those in whom we now place our trust. Methinks I hear a voice coming up from the lowly pillows of patriotism's immortal martyrs, saying, "Be of good cheer, all will yet be well." We cannot, will not believe that the respondent's unjust appeals will avail him now. He appeals to the truth of history to vindicate him in the acts of former Executives; but truth itself rises up from the midst of the mass of testimony here adduced, and says, even in this appeal he has polluted God's holy sanctuary; and when on justice he relies to protect him, and lift him up out of his difficulties, justice comes forward in all her majesty, and declares that he has not only trampled the laws of man but of God under foot. When he indirectly asks that the mantle of charity shall by you be thrown over his shortcomings and violations of law, clemency steps forward, and with a loud voice cries, "Forbearance has ceased to be a virtue;" "Mercy to this criminal would be cruelty to the state."

From the 14th day of April, 1865, to this day, as shown by the testimony, he has been consistent only with himself, and the evil spirits of his administration. False to the people who took him from obscurity and conferred on him splendor; who dug him from that oblivion to which he had been consigned by the treason of his State, and gave him that distinction which, as disclosed by his subsequent acts, he never merited, and has so fearfully scandalized, disgraced, and dishonored; false to the memory of him whose death made him President; false to the principles of our contest for national life; false to the Constitution and laws of the land and his oath of office; filled with all vanity, lust, and pride; substituting, with the most disgusting self-complacency and ignorance, his own coarse, brutalized will for the will of the people, and substituting his vulgar, vapid, and ignorant utterances for patriotism, statesmanship and faithful public service, he has completed his circle of high crimes and misdemeanors; and, thanks to Almighty God, by the imbedded wisdom of our fathers found in the Constitution of our country, he stands to-day, with all his crimes upon his head, uncovered before the world, at the bar of this the most august tribunal on earth, to receive the awful sentence that awaits him as

a fitting punishment for the crimes and misdemeanors of which he stands impeached by the House of Representatives, in the name and on behalf of all the people. Here, senators, we rest our case; here we leave the great criminal of the age. In your hands, as wisely provided by the charter of our liberties, this offender against the Constitution, the laws, liberty, peace, and public decency of our country, is now left to be finally and in the name of all the people, we humbly trust, disposed of forever, in such manner as no more to outrage the memories of an heroic and illustrious past, nor dim the hopes, expectations and glories of the coming future. Let us, we implore you, no more hear *his* resounding footfalls in the temple of American constitutional liberty, nor have the vessels of the ark of the covenant of our fathers polluted by his unholy hands Let not the blood of a half million of heroes who went to their deaths on the nation's battle-fields for the nation's life cry from the ground against us on account of the crimes permitted by us, and committed by him whom we now leave in your hands. Standing here to-day for the last time with my brother managers, to take leave of this case and this great tribunal, I am penetrated and overwhelmed with emotion. Memory is busy with the scenes of the years which have intervened between March 4th, 1861, and this day. Our great war, its battles and ten thousand incidents, without mental bidding and beyond control, almost pass in panoramic view before me. As in the presence of those whom I have seen fall in battle as we rushed to victory, or die of wounds or disease in hospital far from home and the loved ones, to be seen no more until the grave gives up its dead, have I endeavored to discharge my humble part in this great trial.

The world in after-times will read the history of the administration of Andrew Johnson as an illustration of the depth to which political and official perfidy can descend. Amid the unhealed ghastly scars of war; surrounded by the weeds of widowhood and cries of orphanage; associating with and sustained by the soldiers of the republic, of whom at one time he claimed to be one; surrounded by the men who had supported, aided, and cheered Mr. Lincoln through the darkest hours and sorest trials of his sad yet immortal administration—men whose lives had been dedicated to the cause of justice, law, and universal liberty—the men who had nominated and elected him to the second office in the nation at a time when he scarcely dared visit his own home because of the traitorous instincts of his own people; yet, as shown by his official acts, messages, speeches, conversations, and associations, almost from the time when the blood of Lincoln was warm on the floor of Ford's theatre, Andrew Johnson was contemplating treason to all the fresh fruits of the overthrown and crushed rebellion, and an affiliation with and a practical official and hearty sympathy for those who had cost hecatombs of slain citizens, billions of treasure, and an almost ruined country. His great aim and purpose has been to subvert law, usurp authority, insult and outrage Congress, reconstruct the rebel States in the interests of treason, insult the memories and resting-places of our heroic dead; outrage the feelings and deride the principles of the living men who aided in saving the Union, and deliver all snatched from wreck and ruin into the hands of unrepentant, but by him pardoned, traitors. But, all honor to the servants of a brave and loyal people, he has been in strict conformity to the Constitution arrested in his career of crime, impeached, arraigned, tried, and here awaits your sentence. We are not doubtful of your verdict. Andrew Johnson has long since been tried by the whole people and found guilty, and you can but confirm that judgment already pronounced by the sovereign American people.

Henceforth our career of greatness will be unimpeded. Rising from our baptism of fire and blood, purified by our sufferings and trials under the approving smiles of Heaven, and freed, as we are, from the crimes of oppression and wrong, the patriot heart looks outward and onward for long and ever increasing national prosperity, virtue, and happiness.

Hon. GEORGE S. BOUTWELL, on behalf of the managers, addressed the Senate, as follows:

MR. PRESIDENT, SENATORS: You may now anticipate the speedy conclusion of your arduous labors. The importance of this occasion is due to the unexampled circumstance that the Chief Magistrate of the principal republic of the world is on trial upon the charge that he is guilty of high crimes and misdemeanors in office. The solemnity of this occasion is due to the circumstance that this trial is a new test of our public national virtue and also of the strength and vigor of popular government. The trial of a great criminal is not an extraordinary event—even when followed by conviction and the severest penalty known to the laws. This respondent is not to be deprived of life, liberty, or property. The object of this proceeding is not the punishment of the offender, but the safety of the state. As the daily life of the wise and just magistrate is an example for good, cheering, encouraging, and strengthening all others, so the trial and conviction of a dishonest or an unfaithful officer is a warning to all men, and especially to such as occupy places of public trust.

The issues of record between the House of Representatives and Andrew Johnson, President of the United States, are technical and limited. We have met the issues, and, as we believe, maintained the cause of the House of Representatives by evidence, direct, clear, and conclusive. Those issues require you to ascertain and declare whether Andrew Johnson, President of the United States, is guilty of high crimes and misdemeanors as set forth in the several articles of impeachment exhibited against him, and especially whether he has violated the laws or the Constitution of the country in the attempt which he made on the 21st of February last to remove Edwin M. Stanton from the office of Secretary for the Department of War, and to appoint Lorenzo Thomas Secretary of War *ad interim*.

These are the issues disclosed by the record. They appear in the statement to be limited in their nature and character; but your final action thereon involves and settles questions of public policy of greater magnitude than any which have been considered in the political or judicial proceedings of the country since the adoption of the Constitution.

Mr. Johnson attempts to defend his conduct in the matter of the removal of Mr. Stanton by an assertion of "the power at any and all times of removing from office all executive officers for cause to be judged of by the President alone."

This claim manifestly extends to the officers of the army and of the navy, of the civil and the diplomatic service. He thus assumes and demands for himself and for all his successors absolute control over the vast and yearly increasing patronage of this government. This claim has never been before asserted, and surely it has never been sanctioned; nor is there a law or usage which furnishes any ground for justification, even the least.

Heretofore the Senate has always been consulted in regard to appointments, and during the sessions of the Senate it has always been consulted in regard to removals from office. The claim now made, if sanctioned, strips the Senate of all practical power in the premises, and leaves the patronage of office, the revenues and expenditures of the country in the hands of the President alone. Who does not see that the power of the Senate to act upon and confirm a nomination is a barren power, as a means of protecting the public interests, if the person so confirmed may be removed from his office at once without the advice and consent of the Senate? If this claim shall be conceded the President is clothed with power to remove every person who refuses to become his instrument.

An evil-minded President may remove all loyal and patriotic officers from the army, the navy, the civil and the diplomatic service, and nominate only his adherents and friends. None but his friends can remain in office; none but his friends can be appointed to office. What security remains for the fidelity of

the army and the navy? What security for the collection of the public revenues? What accountability remains in any branch of the public service? Every public officer is henceforth a mere dependent upon the Executive. Heretofore the Senate could say to the President you shall not remove a faithful, honest public officer. This power the Senate has possessed and exercised for nearly eighty years, under and by virtue of express authority granted in the Constitution. Is this authority to be surrendered? Is this power of the Senate, this prerogative we may almost call it, to be abandoned? Has the country, has the Senate, in the exercise of its legislative, executive, or judicial functions, fully considered these broader and graver issues touching and affecting vitally our institutions and system of government?

The House of Representatives has brought Andrew Johnson, President of the United States, to the bar of this august tribunal, and has here charged him with high crimes and misdemeanors in office. He meets the charge by denying and assailing the ancient, undoubted, constitutional powers of the Senate. This is the grave, national, historical, constitutional issue. When you decide the issues of record, which appear narrow and technical, you decide these greater issues also.

The managers on the part of the House of Representatives, as time and their abilities may permit, intend to deal with the criminal and with these, his crimes, and also to examine the constitutional powers of the President and of the Senate. I shall first invite your attention, senators, to the last-mentioned topics.

It is necessary, in this discussion, to consider the character of the government, and especially the distribution of powers and the limitations placed by the Constitution upon the executive, judicial, and legislative departments.

The tenth amendment to the Constitution provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

This provision is not to be so construed as to defeat the objects for which the Constitution itself was established; and it follows, necessarily, that the three departments of the government possess sufficient power, collectively, to accomplish those objects.

It will be seen from an examination of the grants of power made to the several departments of the government that there is a difference in the phraseology employed, and that the legislative branch alone is intrusted with discretionary authority. The first section of the first article provides that "all legislative powers *herein granted* shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The first section of the second article provides that "the executive power shall be vested in a President of the United States of America;" and the first section of the third article provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." The words "herein granted," as used in the first section of the first article of the Constitution, are of themselves words of limitation upon the legislative powers of Congress, confining those powers within the authority expressed in the Constitution. The absence of those words in the provisions relating to the executive and judicial departments does not, as might at first be supposed, justify the inference that unlimited authority is conferred upon those departments. An examination of the Constitution shows that the executive and judicial departments have no inherent vigor by which, under the Constitution, they are enabled to perform the functions delegated to them, while the legislative department, in noticeable contrast, is clothed with authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, *and all other powers vested by this Constitution in the government of the United States, or any department or officer thereof.*"

By virtue of this provision the Constitution devolves upon Congress the duty of providing by legislation for the full execution, not only of the powers vested in Congress, but also of providing by legislation for the execution of those powers which by the Constitution are vested in the executive and judicial departments. The legislative department has original power derived from the Constitution, by which it can set and keep itself in motion as a branch of the government, while the executive and judicial departments have no self-executing constitutional capacity, but are constantly dependent upon the legislative department. Nor does it follow, as might upon slight attention be assumed, that the executive power given to the President is an unlimited power, or that it answers or corresponds to the powers which have been or may be exercised by the executive of any other government. The President of the United States is not endowed by the Constitution with the executive power which was possessed by Henry VIII or Queen Elizabeth, or by any ruler in any other country or time, but only with the power expressly granted to him by the Constitution, and with such other powers as have been conferred upon him by Congress, for the purpose of carrying into effect the powers which are granted to the President by the Constitution. Hence it may be asserted that whenever the President attempts to exercise any power, he must, if his right be questioned, find a specific authority in the Constitution or laws. By the Constitution he is Commander-in-chief of the army and navy; but it is for Congress to decide, in the first place, whether there shall be an army or navy, and the President must command the army or navy as it is created by Congress, and subject, as is every other officer of the army or navy, to such rules and regulations as Congress may from time to time establish.

The President "may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices," but the executive offices themselves are created by Congress, and the duties of each officer are prescribed by law. In fine, the power to set the government in motion and to keep it in motion is lodged exclusively in Congress, under the provisions of the Constitution.

By our system of government the sovereignty is in the people of the United States, and that sovereignty is fully expressed in the preamble to the Constitution. By the Constitution the people have vested discretionary power—limited, it is true—in the Congress of the United States, while they have denied to the executive and judicial departments all discretionary or implied power whatever.

The nature and extent of the powers conferred by the Constitution upon Congress have been clearly and fully set forth by the Supreme Court. (McCulloch *vs.* the State of Maryland, 4th Wheaton, pp. 409 and 420.) The court, in speaking of the power of Congress, say: "The government which has a right to do an act, and has imposed on it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means." Again, they say: "We admit, as all must admit, that the powers of the government are limited, and that these limits are not to be transcended; but we think the sound construction of the Constitution must allow to *the national legislature* that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the thing be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to the end, which are not prohibited, and consistent with the letter and spirit of the Constitution, are constitutional."

It is also worthy of remark, in this connection, that the article which confers legislative powers upon the Congress of the United States declares that *all* legislative powers herein granted, that is, granted in the Constitution, shall be vested in the Congress of the United States; while in the section relating to

the powers of the President it is declared that *the* executive power shall be vested in a President of the United States of America. The inference from this distinction is in harmony with what has been previously stated. "The executive power" spoken of is that which is conferred upon the President by the Constitution, and it is limited by the terms of the Constitution, and must be exercised in the manner prescribed by the Constitution. The words used are to be interpreted according to their ordinary meaning.

It is also worthy of remark that the Constitution, in terms, denies to Congress various legislative powers specified. It denies also to the United States various powers, and various powers enumerated are likewise denied to the States. There is but one denial of power to the President, and that is a limitation of an express power granted. The single instance of a denial of power to the President is in that provision of the Constitution wherein he is authorized "to grant reprieves and pardons for offences against the United States, except in cases of impeachment." As the powers granted to the President are specified, and as he takes nothing by implication or inference, there was no occasion to recite or enumerate powers not delegated to him. As the Constitution clothes Congress with powers of legislation which are ample for all the necessities of national life, wherein there is opportunity for the exercise of a wide discretion, it was necessary to specify such powers as are prohibited to Congress. The powers of Congress are ascertained by considering as well what is prohibited as what is granted; while the powers of the Executive are to be ascertained clearly and fully by what is granted. Where there is nothing left to inference, implication, or discretion, there is no necessity for clauses or provisions of inhibition. In the single case of the grant of the full power of pardon to the President, a power unlimited in its very nature, the denial of the power to pardon in case of impeachment became necessary. This example fully illustrates and establishes the position to which I now ask your assent. If this view be correct it follows necessarily, as has been before stated, that the President, acting under the Constitution, can exercise those powers only which are specifically conferred upon him, and can take nothing by construction, by implication, or by what is sometimes termed the necessity of the case.

But in every government there should be in its constitution capacity to adapt the administration of affairs to the changing conditions of national life. In the government of the United States this capacity is found in Congress, in virtue of the provision already quoted, by which Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, (*i. e.*, the powers given to Congress,) and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

It is made the duty of the President, "from time to time, to give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient."

Provision is also made in the Constitution for his co-operation in the enactment of laws. Thus it is in his power to lay before Congress the reasons which, in his opinion, may at any time exist for legislative action in aid of the executive powers conferred by the Constitution upon the President; and under the ample legislative powers secured to Congress by the provision already quoted, there is no reason in the nature of the government why the constitutional and lawful powers of the Executive may not be made adequate to every emergency of the country. In fine, the President may be said to be governed by the principles which govern the judge in a court of law. He must take the law and administer it as he finds it without any inquiry on his part as to the wisdom of the legislation. So the President, with reference to the measure of his own powers, must take the Constitution and the laws of the country as they are, and be governed strictly by them. If, in any particular, by implication or construction,

he assumes and exercises authority not granted to him by the Constitution or the laws, he violates his oath of office, by which, under the Constitution, it is made his duty "to take care that the laws be faithfully executed," which implies necessarily that he can go into no inquiry as to whether the laws are expedient or otherwise; nor is it within his province, in the execution of the law, to consider whether it is constitutional. In his communications to Congress he may consider and discuss the constitutionality of existing or proposed legislation, and when a bill is passed by the two houses and submitted to him for approval, he may, if in his opinion the same is unconstitutional, return it to the house in which it originated with his reasons. In the performance of these duties he exhausts his constitutional power in the work of legislation. If, notwithstanding his objections, Congress, by a two-thirds majority in each house, shall pass the bill, it is then the duty of the President to obey and execute it, as it is his duty to obey and execute all laws which he or his predecessors may have approved.

If a law be in fact unconstitutional it may be repealed by Congress, or it may, possibly, when a case duly arises, be annulled in its unconstitutional features by the Supreme Court of the United States. The repeal of the law is a legislative act; the declaration by the court that it is unconstitutional is a judicial act; but the power to repeal, or to annul, or to set aside a law of the United States, is in no aspect of the case an executive power. It is made the duty of the Executive to take care that the laws be faithfully executed—an injunction wholly inconsistent with the theory that it is in the power of the Executive to repeal, or annul, or dispense with the laws of the land. To the President in the performance of his executive duties all laws are alike. He can enter into no inquiry as to their expediency or constitutionality. All laws are presumed to be constitutional, and whether in fact constitutional or not, it is the duty of the Executive so to regard them while they have the form of law. When a statute is repealed for its unconstitutionality, or for any other reason, it ceases to be law in form and in fact. When a statute is annulled in whole or in part by the opinion of a competent judicial tribunal, from that moment it ceases to be law. But the respondent and the counsel for the respondent will seek in vain for any authority or color of authority in the Constitution or the laws of the country by which the President is clothed with power to make any distinction upon his own judgment, or upon the judgment of any friends or advisers, whether private or official persons, between the several statutes of the country, each and every one of which he is, by the Constitution and by his oath of office, required faithfully to execute. Hence it follows that the crime of the President is not, either in fact or as set forth in the articles of impeachment, that he has violated a constitutional law; but his crime is that he has violated a law, and in his defence no inquiry can be made whether the law is constitutional; for inasmuch as he had no constitutional power to inquire for himself whether the law was constitutional or not, so it is no excuse for him that he did unlawfully so inquire and came to the conclusion that the law was unconstitutional.

It follows, from the authorities already quoted, and the positions founded thereon, that there can be no inquiry here and now by this tribunal whether the act in question—the act entitled "An act regulating the tenure of certain civil offices"—is in fact constitutional or not. It was and is the law of the land. It was enacted by a strict adherence to constitutional forms. It was, and is, binding upon all the officers and departments of the government. The Senate, for the purpose of deciding whether the respondent is innocent or guilty, can enter into no inquiry as to the constitutionality of the act, which it was the President's duty to execute, and which, upon his own answer, and by repeated official confessions and admissions, he intentionally, wilfully, deliberately set aside and violated.

If the President, in the discharge of his duty "to take care that the laws be faithfully executed," may inquire whether the laws are constitutional, and execute those only which he believes to be so, then, for the purposes of government, his will or opinion is substituted for the action of the law-making power, and the government is no longer a government of laws, but the government of one man. This is also true, if, when arraigned, he may justify by showing that he has acted upon advice that the law was unconstitutional. Further, if the Senate sitting for the trial of the President may inquire and decide whether the law is in fact constitutional, and convict the President if he has violated an act believed to be constitutional, and acquit him if the Senate think the law unconstitutional, then the President is in fact tried for his judgment, to be acquitted if in the opinion of the Senate it was a correct judgment, and convicted if in the opinion of the Senate his judgment was erroneous. This doctrine offends every principle of justice. His offence is that he intentionally violated a law. Knowing its terms and requirements, he disregarded them.

With deference I maintain still further, that it is not the right of any senator in this trial to be governed by any opinion he may entertain of the constitutionality or expediency of the law in question. For the purposes of this trial the statute which the President, upon his own confession, has repeatedly violated is the law of the land. His crime is that he violated the law. It has not been repealed by Congress; it has not been annulled by the Supreme Court; it stands upon the statute-book as the law; and for the purposes of this trial it is to be treated by every senator as a constitutional law. Otherwise it follows that the President of the United States, supported by a minority exceeding by one a third of this Senate, may set aside, disregard, and violate all the laws of the land. It is nothing to this respondent, it is nothing to this Senate, sitting here as a tribunal to try and judge this respondent, that the senators participated in the passage of the act, or that the respondent, in the exercise of a constitutional power, returned the bill to the Senate with his objections thereto. The act itself is as binding, is as constitutional, is as sacred in the eye of the Constitution as the acts that were passed at the first session of the first Congress. If the President may refuse to execute a law because in his opinion it is unconstitutional, or for the reason that, in the judgment of his friends and advisers, it is unconstitutional, then he and his successors in office may refuse to execute any statute the constitutionality of which has not been affirmatively settled by the Supreme Court of the United States. If a minority, exceeding one-third of this Senate by one, may relieve the President from all responsibility for this violation of his oath of office, because they concur with him in the opinion that this legislation is either unconstitutional or of doubtful constitutionality, then there is no security for the execution of the laws. The constitutional injunction upon the President is to take care that the laws be faithfully executed; and upon him no power whatsoever is conferred by the Constitution to inquire whether the law that he is charged to execute is or is not constitutional. The constitutional injunction upon you, in your present capacity, is to hold the respondent faithfully to the execution of the constitutional trusts and duties imposed upon him. If he has wilfully disregarded the obligation resting upon him, to take care that the laws be faithfully executed, then the constitutional duty imposed upon you is to convict him of the crime of having wilfully disregarded the laws of the land and violated his oath of office.

I indulge, Senators, in great plainness of speech, and pursue a line of remark which, were the subject less important or the duty resting upon us less solemn, I should studiously avoid. But I speak with every feeling and sentiment of respect for this body and this place of which my nature is capable. In my boyhood, from the gallery of the old chamber of the Senate, I looked, not with admiration merely, but with something of awe upon the men of that generation who were then in the seats which you now fill. Time and experience may have

modified and chastened those impressions, but they are not, they can not, be obliterated. They will remain with me while life remains. But, with my convictions of my own duty, with my convictions of your duty, with my convictions of the danger, the imminent peril, to our country if you should not render a judgment of guilty against this respondent, I have no alternative but to speak with all the plainness and directness which the most earnest convictions of the truth of what I utter can inspire.

Nor can the President prove or plead the motive by which he professes to have been governed in his violation of the laws of the country. Where a positive specific duty is imposed upon a public officer, his motives can not be good if he wilfully neglects or refuses to discharge his duty in the manner in which it is imposed upon him. In other words, it is not possible for a public officer, and particularly for the President of the United States, who is under a special constitutional injunction to discharge his duty faithfully, to have any motive except a bad motive, if he wilfully violates his duty. A judge, to be sure, in the exercise of a discretionary power, as in imposing a sentence upon a criminal where the penalty is not specific, may err in the exercise of that discretion and plead properly his good motives in the discharge of his duty. That is, he may say that he intended, under the law, to impose a proper penalty; and inasmuch as that was his intention, though all other men may think that the penalty was either insufficient or excessive, he is fully justified by his motives.

So the President, having vested in him discretionary power in regard to granting pardons, might, if arraigned for the improper exercise of that power in a particular case, plead and prove his good motives, although his action might be universally condemned as improper or unwise in that particular case. But the circumstances of this respondent are wholly different. The law which, as he admits, he has intentionally and deliberately violated, was mandatory upon him, and left in his hands no discretion as to whether he would, in a given case, execute it or not.

A public officer can neither plead nor prove good motives to refute or control his own admission that he has intentionally violated a public law.

Take the case of the President; his oath is: "I do solemnly swear that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States." One of the provisions of that Constitution is, that the President shall "take care that the laws be faithfully executed." In this injunction there are no qualifying words. It is made his duty to take care that the *laws, the laws,* be faithfully executed. A law is well defined to be "a rule laid, set, or established by the law-making power of the country." It is of such rules that the Constitution speaks in this injunction to the President; and in obedience to that injunction, and with reference to his duty under his oath to take care that the laws be faithfully executed, he can enter into no inquiry as to whether those laws are expedient or constitutional, or otherwise. And inasmuch as it is not possible for him, under the Constitution, to enter lawfully into any such inquiry, it is alike impossible for him to plead or to prove that, having entered into such inquiry, which was in itself unlawful, he was governed by a good motive in the result which he reached, and in his action thereupon. Having no right to inquire whether the laws were expedient or constitutional, or otherwise, if he did so inquire, and if upon such inquiry he came to the conclusion that, for any reason, he would not execute the law according to the terms of the law, then he wilfully violated his oath of office and the Constitution of the United States. The necessary, the inevitable presumption in law is, that he acted under the influence of bad motives in so doing, and no evidence can be introduced controlling or coloring in any degree this necessary presumption of the law.

Having, therefore, no right to entertain any motive contrary to his constitu-

tional obligation to execute the laws, he cannot plead his motive. Inasmuch as he can neither plead nor prove his motive, the presumption of the law must remain that in violating his oath of office and the Constitution of the United States he was influenced by a bad motive. The magistrate who wilfully breaks the laws, in violation of his oath to execute them, insults and outrages the common sense and the common nature of his countrymen when he asserts that their laws are so bad that they deserve to be broken. This is the language of a defiant usurper, or of a man who has surrendered himself to the counsel and control of the enemies of his country.

If a President, believing a law to be unconstitutional, may refuse to execute it, then your laws for the reconstruction of the Southern States, your laws for the collection of the internal revenue, your laws for the collection of custom-house duties, are dependent, for their execution, upon the individual opinion of the President as to whether they are constitutional or not; and if these laws are so dependent, all other laws are equally dependent upon the opinion of the Executive. Hence it follows that whatever the legislation of Congress may be, the laws of the country are to be executed only so far as the President believes them to be constitutional. This respondent avers that his sole object in violating the tenure-of-office act was to obtain the opinion of the Supreme Court upon the question of the constitutionality of that law. In other words, he deliberately violated the law, which was in him a crime, for the purpose of ascertaining judicially whether the law could be violated with impunity or not. At that very time, he had resting upon him the obligations of a citizen to obey the laws, and the higher and more solemn obligation, imposed by the Constitution upon the first magistrate of the country, to execute the laws. If a private citizen violates a law, he does so at his peril. If the President, or Vice-President, or any other civil officer, violates a law, his peril is that he may be impeached by the House of Representatives and convicted by the Senate. This is precisely the responsibility which the respondent has incurred; and it would be no relief to him for his wilful violation of the law, in the circumstances in which he is now placed, if the court itself had pronounced the same to be unconstitutional. But it is not easy to comprehend the audacity, the criminal character of a proceeding by which the President of the United States attempts systematically to undermine the government itself by drawing purposely into controversy, in the courts and elsewhere, the validity of the laws enacted by the constituted authorities of the country, who, as much as himself, are individually under an obligation to obey the Constitution in all their public acts. With the same reason, and for the same object, he might violate the reconstruction laws, tax laws, tariff acts, or the neutrality laws of the country; and thus, in a single day of his official life, raise questions which could not be disposed of for years in the courts of the country. The evidence discloses the fact that he has taken no step for the purpose of testing the constitutionality of the law. He suspended numerous officers under, or if not under, at least, as he himself admits, in conformity with the tenure-of-office law, showing that it was not his sole object to test its constitutionality. He has had opportunity to make application through the Attorney General for a writ of *quo warranto*, which might have tested the validity of the law in the courts. This writ is the writ of the government, and it can never be granted upon the application of a private person. The President has never taken one step to test the law in the courts. Since his attempted removal of Mr. Stanton on the 21st of February last, he might have instituted proceedings by a writ of *quo warranto*, and by this time have obtained, probably, a judicial opinion covering all the points of the case. But he shrinks from the test he says he sought. Thus is the pretext of the President fully exposed. The evidence shows that he never designed to test the law in the courts. His object was to seize the offices of the government for purposes of corruption, and by their influence to enable him to reconstruct the Union in the interest of the rebellious States. In

short, he resorted to this usurpation as an efficient and necessary means of usurping all power and of restoring the government to rebel hands.

No criminal was ever arraigned who offered a more unsatisfactory excuse for his crimes. The President had no right to do what he says he designed to do, and the evidence shows that he never has attempted to do what he now assigns as his purpose when he trampled the laws of his country under his feet.

These considerations have prepared the way in some degree, I trust, for an examination of the provisions of the Constitution relating to the appointment of embassadors and other public ministers and consuls, judges of the Supreme Court, and other officers of the United States, for whose appointment provision is made in the second section of the second article of the Constitution. It is there declared that the President "shall nominate," and, by and with the consent of the Senate, shall "appoint embassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for and which shall be established by law." The phrase, "are not herein otherwise provided for," is understood to refer to senators, who, under the Constitution, in case of a vacancy, may be appointed by the governors of the several States, and to those appointments which might be confided by law to the courts or to the heads of departments. It is essential to notice the fact that neither in this provision of the Constitution nor in any other is power given to the President to remove any officer. The only power of removal specified in the Constitution is that of the Senate, by its verdict of guilty, to remove the President, Vice-President, or other civil officer who may be impeached by the House of Representatives and presented to the Senate for trial.

Upon the premises already laid down it is clear that the power of removal from office is not vested in the President alone, but only in the President by and with the advice and consent of the Senate. Applying the provision of the Constitution already cited to the condition of affairs existing at the time the government was organized, we find that the course pursued by the first Congress and by the first President was the inevitable result of the operation of this provision of the organic law. In the first instance, several executive departments were established by acts of Congress, and in those departments offices of various grades were created. The conduct of foreign affairs required the appointment of ambassadors, ministers, and consuls, and consequently those necessary offices were established by law. The President, in conformity with this provision of the Constitution, made nominations to the Senate of persons to fill the various offices so established. These nominations were considered and acted upon by the Senate, and when confirmed by the Senate the persons so nominated were appointed and authorized by commissions under the hand of the President to enter upon the discharge of their respective duties. In the nature of the case it was not possible for the President, during a session of the Senate, to assign to duty in any of the offices so created any person who had not been by him nominated to the Senate and by that body confirmed, and there is no evidence that any such attempt was made. The persons thus nominated and confirmed were in their offices under the Constitution, and by virtue of the concurrent action of the President and the Senate. There is not to be found in the Constitution any provision contemplating the removal of such persons from office. But inasmuch as it is essential to the proper administration of affairs that there should be a power of removal, and inasmuch as the power of nomination and confirmation vested in the President and in the Senate is a continuing power, not exhausted either by a single exercise or by a repeated exercise in reference to a particular office, it follows legitimately and properly that the President might at any time nominate to the Senate a person to fill a particular office, and the Senate in the exercise of its constitutional power could confirm that nomination, that the person so nominated and confirmed would have a right to take

and enjoy the office to which he had been so appointed, and thus to dispossess the previous incumbent. It is apparent that no removal can be made unless the President takes the initiative, and hence the expressiou, "removal by the President."

As, by a common and universally recognized principle of construction, the most recent statute is obligatory and controlling wherever it contravenes a previous statute, so a recent commission, issued under an appointment made by and with the advice and consent of the Senate, supersedes a previous appointment although made in the same manner. It is thus apparent that there is, under and by virtue of the clause of the Constitution quoted, no power of removal vested either in the President or in the Senate, or in both of them together as an independent power; but it is rather a consequence of the power of appointment. And as the power of appointment is not vested in the President, but only the right to make a nomination, which becomes an appointment only when the nomination has been confirmed by the Senate, the power of removing a public officer cannot be deemed an executive power solely within the meaning of this provision of the Constitution.

This view of the subject is in harmony with the opinion expressed in the seventy-sixth number of the Federalist. After stating with great force the objections which exist to the "exercise of the power of appointing to office by an assembly of men," the writer proceeds to say:

The truth of the principles here advanced seems to have been felt by the most intelligent of those who have found fault with the provision made in this respect by the convention. They contend that the President ought solely to have been authorized to make the appointments under the Federal government. But it is easy to show that every advantage to be expected from such an arrangement would in substance be derived from the power of *nomination*, which is proposed to be conferred upon him, while several disadvantages which might attend the absolute power of appointment in the hands of that officer would be avoided. In the act of nominating his judgment alone would be exercised, and as it would be his sole duty to point out the man who with the approbation of the Senate should fill an office, his responsibility would be as complete as if he were to make the final appointment. There can, in this view, be no difference between nominating and appointing. The same motives which would influence a proper discharge of his duty in one case would exist in the other; and as no man could be appointed but upon his previous nomination, every man who might be appointed would be in fact his choice.

But his nomination may be overruled. This it certainly may, yet it can only be to make place for another nomination by himself. The person ultimately appointed must be the object of his preference, though, perhaps not in the highest degree. It is also not very probable that his nomination would often be overruled. The Senate could not be tempted by the preference they might feel to another to reject the one proposed, because they could not assure themselves that the person they might wish would be brought forward by a second, or by any subsequent nomination. They could not even be certain that a future nomination would present a candidate in any degree more acceptable to them. And as their dissent might cast a kind of stigma upon the individual rejected, and might have the appearance of a reflection upon the judgment of the Chief Magistrate, it is not likely that their sanction would often be refused, where there were not special and strong reasons for the refusal.

To what purpose then require the co-operation of the Senate? I answer that the necessity of their concurrence would have a powerful, though in general, a silent operation. It would be an excellent check upon the spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters, from State prejudice, from family connection, from personal attachment, or from a view to popularity. And, in addition to this, it would be an efficacious source of stability in the administration.

It will readily be comprehended that a man who had himself the sole disposition of office would be governed much more by his private inclinations and interests than when he was bound to submit the propriety of his choice to the dictation and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing. The danger of his own reputation, and, in the case of an elective magistrate, to his political existence, from betraying a spirit of favoritism, or an unbecoming pursuit of popularity, to the observation of a body whose opinion would have great weight in forming that of the public, could not fail to operate as a barrier to one and to the other. He would be both ashamed and afraid to bring forward for the most distinguished or lucrative stations candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, and possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.

When the President has made a nomination for a particular office, and that nomination has been confirmed by the Senate, the constitutional power of the President during the session of the Senate is exhausted with reference to that officer. All that he can do under the Constitution is, in the same manner to nominate a successor, who may be either confirmed or rejected by the Senate. Considering the powers of the President exclusively with reference to the removal and appointment of civil officers during the session of the Senate, it is clear that he can only act in concurrence with the Senate. An office being filled, he can only nominate a successor, who, when confirmed by the Senate, is, by operation of the Constitution, appointed to the office, and it is the duty of the President to issue his commission accordingly. This commission operates as a *supersedeas*, and the previous occupant is thereby removed.

No legislation has attempted to enlarge or diminish the constitutional powers of the President, and no legislation can enlarge or diminish his constitutional powers in this respect, as I shall hereafter show. It is here and now in the presence of this provision of the Constitution concerning the true meaning, of which there neither is nor has ever been any serious doubt in the mind of any lawyer or statesman, that we strip the defence of the President of all the questions and technicalities which the intellects of men, sharpened but not enlarged by the practice of the law, have wrung from the legislation of the country covering three-fourths of a century.

On the 21st day of February last Mr. Stanton was *de facto* and *de jure* Secretary for the Department of War. The President's letter to Mr. Stanton, of that date, is evidence of this fact:

EXECUTIVE MANSION,
Washington, D. C., February 21, 1868.

SIR: By virtue of the power and authority vested in me as President by the Constitution and laws of the United States you are hereby removed from office as Secretary for the Department of War, and your functions as such will terminate upon receipt of this communication.

You will transfer to Brevet Major General Lorenzo Thomas, Adjutant General of the army, who has this day been authorized and empowered to act as Secretary of War *ad interim*, all records, books, papers, and other public property now in your custody and charge.

Respectfully, yours,

ANDREW JOHNSON.

Hon. EDWIN M. STANTON, *Washington, D. C.*

This letter is an admission, not only that Mr. Stanton was Secretary of War on the 21st of February, 1868, but also that the suspension of that officer of the 12th of August, A. D. 1867, whether made under the tenure-of-office act or not, was abrogated by the action of the Senate of the 13th of January, 1868, and that then Mr. Stanton thereby was restored lawfully to the office of Secretary for the Department of War.

On the 21st day of February the Senate was in session. There was then but one constitutional way for the removal of Mr. Stanton: a nomination by the President to the Senate of a successor, and his confirmation by that body. The President attempted to remove Mr. Stanton in a way not known to the Constitution, and in violation thereof, by issuing the said order for his removal. In the first of the articles it is set forth that this order was issued "in violation of the Constitution and of the laws of the United States," and the President is consequently guilty under this article; we have proved a violation either of the Constitution or the laws. If we show that he has violated the Constitution of the United States, we show also that he has violated his oath of office, which pledged him to support the Constitution. Thus is the guilt of the President, under the Constitution and upon admitted facts, established beyond a reasonable doubt. This view is sufficient to justify and require at your hands a verdict of guilty under the first article, and this without any reference to the legislation of the country, and without reference to the constitutionality of the tenure-of-office act or to the question whether the Secretary of War is

included within its provisions or not. But I intend in the course of my argument to deal with all these questions of law, and to apply the law as it shall appear to the facts proved or admitted. To be sure, in my judgment the case presented by the House of Representatives in the name of all the people of the United States might safely be rested here; but the cause of justice, the cause of the country, requires us to expose and demonstrate the guilt of the President in all the particulars set forth in the articles of impeachment. We have no alternative but to proceed. In this connection I refer to a view presented by the counsel for the President in his opening argument. He insists, or suggests, that inasmuch as the letter to Stanton of the 21st of February did not, in fact, accomplish a removal of the Secretary, that therefore no offence was committed. The technicalities of the law have fallen into disrepute among the people, and sometimes even in the courts. The technicalities proper of the law are the rules developed by human experience, and justly denominated, as is the law itself, the perfection of human reason. These rules, wise though subtle, aid in the administration of justice in all tribunals where the laws are judicially administered. But it often happens that attorneys seek to confuse the minds of men, and thwart the administration of justice, by the suggestion of nice distinctions which have no foundation in reason, and find no support in general principles of right.

The President cannot assume to exercise a power, as a power belonging to the office he holds, there being no warrant in law for such exercise, and then plead that he is not guilty because the act undertaken was not fully accomplished. The President is as guilty in contemplation of law as he would have been if Mr. Stanton had submitted to his demand and retired from the office of Secretary for the Department of War. Nothing more possible remained for the President except a resort to force, and what he did and what he contemplated doing to obtain possession of the office by force will be considered hereafter.

If these views are correct, the President is wholly without power, under and by virtue of the Constitution, to suspend a public officer. And most assuredly nothing is found in the Constitution to sustain the arrogant claim which he now makes, that he may during a session of the Senate suspend a public officer indefinitely and make an appointment to the vacancy thus created without asking the advice and consent of the Senate either upon the suspension or the appointment.

I pass now to the consideration of the third clause of the second section of the second article of the Constitution:

> The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

The phrase, "may happen," construed according to the proper and well-understood meaning of the words when the Constitution was framed, referred to those vacancies which might occur independently of the will of the government—vacancies arising from death, from resignation, from circumstances not produced by the act of the appointing power. The words "happen" and "happened" are of frequent use in the Bible, "that well of pure English undefiled," and always in the sense of accident, fortuity, chance, without previous expectation, as to befall, to light, to fall, or to come unexpectedly. This clause of the Constitution contains a grant of power to the President, and under and by virtue of it he may take and exercise the power granted, but nothing by construction or by implication. He then, by virtue of his office, may, during the recess of the Senate, grant commissions which shall expire at the end of the next session, and thus fill up any vacancies that may happen, that is, that may come by chance, by accident, without any agency on his part.

If, then, it be necessary and proper, as undoubtedly it is necessary and proper, that provision should be made for the suspension or temporary removal of offi-

cers who, in the recess of the Senate, have proved to be incapable or dishonest, or who in the judgment of the President are disqualified for the further discharge of the duties of their offices, it is clearly a legislative right and duty, under the clause of the Constitution which authorizes Congress "to make all laws which shall be necessary and proper to carry into execution the foregoing powers, and all other powers vested in the government of the United States, or in any department or officer thereof," to provide for the contingency. It is no answer to this view of the case to say that until the second of March, 1867, Congress neglected to legislate upon this subject, and that during the long period of such neglect, by the advice of Attorneys General, the practice was introduced and continued, by which the President, during the recess of the Senate, removed from office persons who had been nominated by the President and confirmed by the Senate. This practice having originated in the neglect of Congress to legislate upon a subject clearly within its jurisdiction, and only tolerated by Congress, has, at most, the force of a practice or usage, which can at any time be annulled or controlled by statute.

This view is also sustained by the reasoning of Hamilton, in the 67th number of the Federalist, in which he says:

> The last of these two clauses, it is equally clear, cannot be understood to comprehend the power of filling vacancies in the Senate, for the following reasons: *First*, the relation in which that clause stands to the other, which declares the general mode of appointing officers of the United States, denotes it to be nothing more than a supplement to the other, for the purpose of establishing an auxiliary method of appointment, in cases to which the general method was inadequate. The ordinary power of appointment is confided to the President and Senate *jointly*, and can therefore only be exercised during the session of the Senate; but as it would have been improper to oblige this body to be continually in session for the appointment of officers, and as vacancies might happen *in their recess*, which it might be necessary for the public service to fill without delay, the succeeding clause is evidently intended to authorize the President, *singly*, to make temporary appointments "during the recess of the Senate, by granting commissions which should expire at the end of their next session."

The arguments which I have thus offered and the authorities quoted show that the President had not the power during the session of the Senate to remove either the Secretary of War or any civil officer from office by virtue of the Constitution. The power of removal during the recess of the Senate was recognized by the act of 1789, and tolerated by the country upon the opinions of Attorneys General till 1867. The President claims, however, and as an incident of the power of removal, the power to suspend from office indefinitely any officer of the government; but inasmuch as his claim to the power of removal is not supported by the Constitution, he cannot sustain any other claim as an incident of that power. But if the power to remove were admitted, it would by no means follow that the President has the power to suspend indefinitely. The power to suspend indefinitely is a different power from that of removal, and it is in no proper sense necessarily an incident. It might be very well conceived that if the framers of the Constitution had thought fit to confer upon the President the power to remove a public officer absolutely, his removal to be followed by the nomination of a successor to the Senate, they might yet have denied to the President the power to suspend public officers indefinitely and to supply their places by his appointees without the advice and consent of the Senate. But, inasmuch as the power to suspend indefinitely is not a power claimed as a specific grant under the Constitution, and as the claim by the President of the power of removal during a session of the Senate is not sustained by the text of the Constitution or by any good authority under it, it is not important to consider whether, if the power of removal were admitted to exist, the power to suspend indefinitely could be considered as an incident. It is sufficient to say that neither power, in the sense claimed by the President, exists under the Constitution or by any provision of law.

I respectfully submit, Senators, that there can be no reasonable doubt of the

soundness of the view I have presented, both of the language and meaning of the Constitution in regard to appointments to office. But, if there were any doubt, it is competent and proper to consider the effects of the claim, if recognized, as set up by the President. And in a matter of doubt as to the construction of the phraseology of the Constitution, it would be conclusive of its true interpretation that the claim asserted by the President is fraught with evils of the gravest character. He claims the right, as well when the Senate is in session as when it is not in session, to remove absolutely, or to suspend for an indefinite period of time, according to his own discretion, every officer of the army, of the navy, and of the civil service, and to supply their places with creatures and partisans of his own. To be sure, he has not asserted, in direct form, his right to remove and suspend indefinitely officers of the army and navy; but when you consider that the Constitution makes no distinction in the tenure of office between military, naval and civil officers; that all are nominated originally by the President and receive their appointments upon the confirmation of the Senate, and hold their offices under the Constitution by no other title than that which secures to a cabinet officer or to a revenue collector the office to which he has been appointed, there can be no misunderstanding as to the nature, extent, and dangerous character of the claim which the President makes. The statement of this arrogant and dangerous assumption is a sufficient answer to any doubt which might exist in the mind of any patriot as to the true intent and meaning of the Constitution. It cannot be conceived that the men who framed that instrument, who were devoted to liberty, who had themselves suffered by the exercise of illegal and irresponsible power, would have vested in the President of the United States an authority, to be exercised without the restraint or control of any other branch or department of the government, which would enable him to corrupt the civil, military, and naval officers of the country by rendering them absolutely dependent for their positions and emoluments upon his will. At the present time there are 41,000 officers, whose aggregate emoluments exceed $21,000,000 per annum. To all these the President's claim applies. These facts express the practical magnitude of the subject. Moreover, this claim was never asserted by any President, or by any public man, from the beginning of the government until the present time. It is in violation also of the act of July 13, 1866, which denies to the Executive the power to remove officers of the army and the navy, except upon sentence of a court-martial. The history of the career of Andrew Johnson shows that he has been driven to the assertion of this claim by circumstances and events connected with his criminal design to break down the power of Congress, to subvert the institutions of the country, and thereby to restore the Union in the interest of those who participated in the rebellion. Having entered upon this career of crime, he soon found it essential to the accomplishment of his purposes to secure the support of the immense retinue of public officers of every grade and description in the country. This he could not do without making them entirely dependent upon his will; and in order that they might realize their dependence, and thus be made subservient to his purposes, he determined to assert an authority over them unauthorized by the Constitution, and theretofore not attempted by any Chief Magistrate. His conversation with Mr. Wood, in the autumn of 1866, fully discloses this purpose.

Previous to the passage of the tenure-of-office act he had removed hundreds of faithful and patriotic public officers, to the great detriment of the public service, and followed by an immense loss of the public revenues. At the time of the passage of the act he was so far involved in his mad schemes—schemes of ambition and revenge—that it was, in his view, impossible for him to retrace his steps. He consequently determined, by various artifices and plans, to undermine that law and secure to himself, in defiance of the will of Congress and of the country, entire control of the officers in the civil service, and in the army and the navy. He thus became gradually involved in an unlawful undertaking,

from which he could not retreat. In the presence of the proceedings against him by the House of Representatives he had no alternative but to assert that under the Constitution power was vested in the President exclusively, without the advice and consent of the Senate, to remove from office every person in the service of the country. This policy, as yet acted upon in part, and developed chiefly in the civil service, has already produced evils which threaten the overthrow of the government. When he removed faithful public officers, and appointed others whose only claim to consideration was their unreasoning devotion to his interest and unhesitating obedience to his will, they compensated themselves for this devotion and this obedience by frauds upon the revenues, and by crimes against the laws of the land. Hence it has happened that in the internal revenue service alone—chiefly through the corruption of men whom he has thus appointed—the losses have amounted to not less than twenty-five, and probably to more than fifty, million of dollars a year during the last two years.

In the presence of these evils, which were then only partially realized, the Congress of the United States passed the tenure-of-office act, as a barrier to their further progress. This act thus far has proved ineffectual as a complete remedy; and now the President, by his answer to the articles of impeachment, asserts his right to violate it altogether, and by an interpretation of the Constitution which is alike hostile to its letter and to the peace and welfare of the country, he assumes to himself absolute and unqualified power over all the offices and officers of the country. The removal of Mr. Stanton, contrary to the Constitution and the laws, is the particular crime of the President for which we now demand his conviction. The extent, the evil character, and the dangerous nature of the claims by which he seeks to justify his conduct, are controlling considerations. By his conviction you purify the government and restore it to its original character. By his acquittal you surrender the government into the hands of an usurping and unscrupulous man, who will use all the vast power he now claims for the corruption of every branch of the public service and the final overthrow of the public liberties.

Nor is it any excuse for the President that he has, as stated in his answer taken the advice of his cabinet officers in support of his claim. In the first place, he had no right under the Constitution to the advice of the head of a department, except upon subjects relating to the duties of his department. If the President has chosen to seek the advice of his cabinet upon other matters, and they have seen fit to give it upon subjects not relating to their respective departments, it is advice which he had no constitutional authority to ask—advice which they were not bound to give, and that advice is to him, and for all the purposes of this investigation and trial, as the advice of private persons merely. But of what value can be the advice of men who, in the first instance, admit that they hold their offices by the will of the person who seeks their advice, and who understand most clearly that if the advice they give should be contrary to the wishes of their master, they would be at once, and in conformity with their own theory of the rights of the President, deprived of the offices which they hold? Having first made these men entirely dependent upon his will, he then solicits their advice as to the application of the principle by which they admit that they hold their places to all the other officers of the government. Could it have been expected that they, under such circumstances, would have given advice in any particular disagreeable to the will of him who sought it?

It was the advice of serfs to their lord, of servants to their master, of slaves to their owner.

The cabinet respond to Mr. Johnson as old Polonius to Hamlet:

Hamlet says: Do you see yonder cloud that's almost in shape of a camel?
Pollonius. And by the mass, and 'tis like a camel, indeed.
Hamlet. Methinks it is like a weasel.
Pollonius. It is backed like a weasel.
Hamlet. Or like a whale?
Pollonius. Very like a whale.

The gentlemen of the cabinet understood the position that they occupied. The President, in his message to the Senate upon the suspension of Mr. Stanton, in which he says that he took the advice of his cabinet in reference to his action upon the bill regulating the tenure of certain civil offices, speaks thus:

> The bill had then not become a law. The limitation upon the power of removal was not yet imposed, and there was yet time to make any changes. If any one of these gentlemen had then said to me that he would avail himself of the provisions of that bill in case it became a law, I should not have hesitated a moment as to his removal.

Having indulged his cabinet in such freedom of opinion when he consulted them in reference to the constitutionality of the bill, and having covered himself and them with public odium by its announcement, he now vaunts their opinions, extorted by power and given in subserviency, that the law itself may be violated with impunity. This, says the President, is the exercise of my constitutional right to the opinion of my cabinet. I, says the President, am responsible for my cabinet. Yes, the President is responsible for the opinions and conduct of men who give such advice as is demanded, and give it in fear and trembling lest they be at once deprived of their places. This is the President's idea of a cabinet, but it is an idea not in harmony with the theory of the Constitution.

The President is a man of strong will, of violent passions, of unlimited ambition, with capacity to employ and use timid men, adhesive men, subservient men, and corrupt men, as the instruments of his designs. It is the truth of history that he has injured every person with whom he has had confidential relations, and many have escaped ruin only by withdrawing from his society altogether. He has one rule of life: he attempts to use every man of power, capacity, or influence within his reach. Succeeding in his attempts, they are in time, and usually in a short time, utterly ruined. If the considerate flee from him, if the brave and patriotic resist his schemes or expose his plans, he attacks them with all the enginery and patronage of his office, and pursues them with all the violence of his personal hatred. He attacks to destroy all who will not become his instruments, and all who become his instruments are destroyed in the use. He spares no one. Already this purpose of his life is illustrated in the treatment of a gentleman who was of counsel for the respondent, but who has never appeared in his behalf.

The thanks of the country are due to those distinguished soldiers who, tempted by the President by offers of kingdoms which were not his to give, refused to fall down and worship the tempter. And the thanks of the country are not less due to General Emory, who, when brought into the presence of the President by a request which he could not disobey, at once sought to protect himself against his machinations by presenting to him the law upon the subject of military orders.

The experience and the fate of Mr. Johnson's eminent adherents are lessons of warning to the country and to mankind; and the more eminent and distinguished of his adherents have furnished the most melancholy lessons for this and for succeeding generations.

It is not that men are ruined when they abandon a party; but in periods of national trial and peril the people will not tolerate those who, in any degree or under any circumstances, falter in their devotion to the rights and interests of the republic. In the public judgment, which is seldom erroneous in regard to public duty, devotion to the country, and adherence to Mr. Johnson are and have been wholly inconsistent.

Carpenter's historical painting of Emancipation is a fit reprentation of an event the most illustrious of any in the annals of America since the adoption of the Constitution. Indeed, it is second to the ratification of the Constitution, only in the fact that that instrument, as a means of organizing and preserving the nation, rendered emancipation possible. The principal figure of the scene is the immortal Lincoln, whose great virtues endear his name and memory to all mankind, and whose untimely and violent death, then the saddest event in our

national experience, but now not deemed so great a calamity to the people who loved him and mourned for him as no public man was ever before loved or lamented, as is the shame, humiliation, disgrace, and suffering, caused by the misconduct and crimes of his successor. It was natural and necessary that the artist should arrange the personages of the group on the right hand and on the left of the principal figure. Whether the particular assignment was by chance, by the taste of the artist, or by the influence of a mysterious Providence which works through human agency, we know not. But on the right of Lincoln are two statesmen and patriots who, in all the trials and vicissitudes of these eventful years, have remained steadfast to liberty, to justice, to the principles of constitutional government. Senators and Mr. Chief Justice, in this presence I venture not to pronounce their names.

On the left of Lincoln are five figures representing the other members of his cabinet. One of these is no longer among the living; he died before the evil days came, and we may indulge the hope that he would have escaped the fate of his associates. Of the other four three have been active in counselling and supporting the President in his attempts to subvert the government. They are already ruined men. Upon the canvass they are elevated to the summit of virtuous ambition. Yielding to the seductions of power they have fallen. Their example and fate may warn us, but their advice and counsel, whether given to this tribunal or to him who is on trial before this tribunal, cannot be accepted as the judgment of wise or of patriotic men.

On motion of Mr. Sprague, at 2 o'clock and 15 minutes p. m. the Senate took a recess for 15 minutes.

At the expiration of the recess the Chief Justice resumed the chair and called the Senate to order.

Mr. SHERMAN. I move that the roll of the senators be called, so that we may get their attendance.

Mr. CONNESS. That is never done.

Mr. SHERMAN. It can be done. A motion to adjourn will have the same effect practically.

Mr. CONNESS. The senator may move an adjournment, and get a call in that way.

Mr. SHERMAN. I move a call of the senators.

The CHIEF JUSTICE. The senator from Ohio moves that the roll of the Senate be called.

Mr. CONNESS. It never has been done.

Mr. SUMNER. The rule provides for a call of the Senate.

Mr. CONNESS. I should like to hear the rule.

Mr. SUMNER. It is Rule 16.

The CHIEF JUSTICE. The Secretary will read the sixteenth rule of the Senate.

The chief clerk read as follows:

16. When the yeas and nays shall be called for by one-fifth of the senators present, each senator called upon shall, unless for special reasons he be excused by the Senate, declare openly and without debate his assent or dissent to the question. In taking the yeas and nays, and upon a call of the Senate, the names of the senators shall be called alphabetically.

The CHIEF JUSTICE. If there be no objection, the Secretary will call the roll, to ascertain who are present.

Mr. DRAKE. I object, sir.

Mr. SHERMAN. I move that there be a call of the Senate.

The motion was agreed to; and the roll being called, 44 senators answered to their names.

The CHIEF JUSTICE. There are 44 senators answering to their names. The honorable manager will proceed.

Mr. Manager BOUTWELL. Mr. President, senators, leaving the discussion of the provisions of the Constitution, I am now prepared to ask your attention to

the character and history of the act of 1789, on which stress has been laid by the President in his answer, and by the learned counsel who opened the case for the respondent. The discussion in the House of Representatives in 1789 related to the bill establishing a department of foreign affairs. The first section of that bill, as it originally passed the House of Representatives, after recapitulating the title of the officer who was to take charge of the department, and setting forth his duties, contained these words in reference to the Secretary of the department: "To be removable from office by the President of the United States." The House, in Committee of the Whole, discussed this provision during several days, and all the leading members of the body appear to have taken part in the debate. As is well known, there was a difference of opinion at the time as to the meaning of the Constitution. Some contended that the power of removing civil officers was vested in the President, absolutely, to be exercised by him, without consultation with the Senate, and this as well when the Senate was in session as during vacations. Others maintained that the initiative in the removal of a public officer must be taken by the President, but that there could be no actual removal except by the advice and consent of the Senate, and that this rule was applicable to the powers of the President, as well during the vacation as during the session of the Senate. Others maintained that during the session of the Senate, while the initiative was in the President, the actual removal of a civil officer could be effected only upon the advice and consent of the Senate, but that during the vacations the President might remove such officers and fill their places temporarily, under commissions, to expire at the end of the next session of the Senate. Mr. Madison maintained the first of these propositions, and he may be said to be the only person of historical reputation at the present day who expressed corresponding opinions, although undoubtedly his views were sustained by a considerable number of members. It is evident from an examination of the debate that Mr. Madison's views were gradually and, finally, successfully undermined by the discussion on that occasion.

As is well known, Roger Sherman was then one of the most eminent members of that body. He was a signer of the Declaration of Independence, a member of the convention which framed the Constitution of the United States, and a member of the House of Representatives of the First Congress. He was undoubtedly one of the most illustrious men of the constitutional period of American history; and in each succeeding generation there have been eminent persons of his blood and name; but at no period has his family been more distinguished than at the present time. Mr. Sherman took a leading part in the discussion, and there is no doubt that the views which he entertained and expressed had a large influence in producing the result which was finally reached. The report of the debate is found in the first volume of the Annals of Congress; and I quote from the remarks made by Mr. Sherman, preserved on pages 510 and 511 of that volume:

Mr. SHERMAN. I consider this a very important subject in every point of view, and therefore worthy of full discussion. In my mind it involves three questions. First. Whether the President has, by the Constitution, the right to remove an officer appointed by and with the advice and consent of the Senate. No gentleman contends but that the advice and consent of the Senate are necessary to make the appointment in all cases, unless in inferior offices where the contrary is established by law; but then they allege that, although the consent of the Senate be necessary to the appointment, the President alone, by the nature of his office, has the power of removal. Now it appears to me that this opinion is ill-founded, because this provision was intended for some useful purpose, and by that construction would answer none at all. I think the concurrence of the Senate as necessary to appoint an officer as the nomination of the President; they are constituted as mutual checks, each having a negative upon the other.

I consider it as an established principle that the power which appoints can also remove, unless there are express exceptions made. Now the power which appoints the judges cannot displace them, because there is a constitutional restriction in their favor; otherwise the President, by and with the advice and consent of the Senate, being the power which appointed them, would be sufficient to remove them. This is the construction in England,

where the King has the power of appointing judges; it was declared to be during pleasure, and they might be removed when the monarch thought proper. It is a general principle in law, as well as reason, that there shall be the same authority to remove as to establish. It is so in legislation, where the several branches, whose concurrence is necessary to pass a law, must concur in repealing it. Just so I take it to be in cases of appointment, and the President alone may remove, when he alone appoints, as in the case of inferior offices to be established by law.

* * * * * * *

As the office is the mere creature of the legislature we may form it under such regulations as we please, with such powers and duration as we think good policy requires. We may say he shall hold his office during good behavior, or that he shall be annually elected. We may say he shall be displaced for neglect of duty, and point out how he shall be convicted of it without calling upon the President or Senate.

The third question is, if the legislature has the power to authorize the President alone to remove this officer, whether it is expedient to invest him with it? I do not believe it absolutely necessary that he should have such power, because the power of suspending would answer all the purposes which gentlemen have in view by giving the power of removal. I do not think that the officer is only to be removed by impeachment, as is argued by the gentleman from South Carolina, (Mr. Smith,) because he is the mere creature of the law, and we can direct him to be removed on conviction of mismanagement or inability, without calling upon the Senate for their concurrence. But I believe, if we make no such provision, he may constitutionally be removed by the President, by and with the advice and consent of the Senate; and I believe it would be most expedient for us to say nothing in the clause on this subject.

I may be pardoned if I turn aside for a moment, and, addressing myself to the learned gentleman of counsel for the respondent who is to follow me in argument, I request him to refute, to overthrow the constitutional argument of his illustrious ancestor, Roger Sherman. Doing this he will have overcome the first, but only the first, of a series of obstacles in the path of the President.

In harmony with the views of Mr. Sherman was the opinion expressed by Mr. Jackson of Georgia, found on page 508 of the same volume. He says:

I shall agree to give him (that is the President) the same power in cases of removal that he has in appointing; but nothing more. Upon this principle, I would agree to give him the power of suspension during the recess of the Senate. This, in my opinion, would effectually provide against those inconveniences which have been apprehended, and not expose the government to those abuses we have to dread from the wanton and uncontrollable authority of removing officers at pleasure.

It may be well to observe that Mr. Madison, in maintaining the absolute power of the President to remove civil officers, coupled with his opinions upon that point doctrines concerning the power of impeachment which would be wholly unacceptable to this respondent. And, indeed, it is perfectly apparent that without the existence of the power to impeach and remove the President of the United States from office, in the manner maintained by Mr. Madison, in that debate, that the concession of absolute power of removal would end in the destruction of the government. Mr. Madison, in that debate, said:

The danger to liberty, the danger of maladministration has not yet been found to lie so much in the facility of introducing improper persons into office as in the difficulty of displacing those who are unworthy of the public trust. (Page 515, vol. 1, Annals of Congress.)

Again he says:

Perhaps the great danger, as has been observed, of abuse in the executive power lies in the improper continuance of bad men in office. But the power we contend for will not enable him to do this; for if an unworthy man be continued in office by an unworthy President, the House of Representatives can at any time impeach him, and the Senate can remove him, whether the President chooses or not. The danger, then, consists merely in this: the President can displace from office a man whose merits require that he should be continued in it. What will be the motives which the President can feel for such abuse of his power and the restraints that operate to prevent it? In the first place, he will be impeachable by this house before the Senate for such an act of maladministration; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his high trust. (Page 517, vol. 1, Annals of Congress.)

It is thus seen that Mr. Madison took great care to connect his opinions of the power of removal in the President with a distinct declaration that if this power was improperly exercised by the President he would himself be liable to

impeachment and removal from office. If Mr. Madison's opinions were to be accepted by the President as a whole, he would be as defenceless as he is at the present time if arraigned upon articles of impeachment based upon acts of maladministration in the removal of public officers. The result of the debate upon the bill for establishing the executive department of foreign affairs was that the phrase in question which made the head of the department "removable from office by the President of the United States," was stricken out by a vote of 31 in the affirmative to 19 in the negative, and another form of expression was introduced into the second section, which is manifestly in harmony with the views expressed by Mr. Sherman, and those who entertained corresponding opinions.

The second section is in these words:

SEC. 2. *And be it further enacted*, That there shall be in the said department an inferior officer, to be appointed by the said principal officer, and to be employed therein as he shall deem proper, and to be called the chief clerk of the department of foreign affairs, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to said department.

(United States Statutes at Large, vol. 1, p. 29.)

It will be seen that the phrase here employed, "whenever the said principal officer shall be removed from office by the President of the United States," is not a grant of power to the President; nor is it, as was asserted by the counsel for the respondent, a legislative interpretation of a constitutional power. But it is merely a recognition of a power in the Constitution to be exercised by the President, at some time, under some circumstances, and subject to certain limitations. But there is no statement or declaration of the time when such power could be exercised, the circumstances under which it might be exercised, or the limitations imposed upon its exercise.

All these matters are left subject to the operation of the Constitution and to future legislation. This is in entire harmony with the declaration made by Mr. White, of North Carolina, in the debate of 1789. He says:

Let us then leave the Constitution to a free operation, and let the President, with or without the consent of the Senate, carry it into execution. Then, if any one supposes himself injured by their determination let him have recourse to the law, and its decision will establish the true construction of the Constitution.

Mr. Gerry, of Massachusetts, also said:

Hence all construction of the meaning of the Constitution is dangerous or unnatural, and therefore ought to be avoided. This is our doctrine, that no power of this kind ought to be exercised by the legislature. But we say, if we must give a construction to the Constitution it is more natural to give the construction in favor of the power of removal vesting in the President, by and with the advice and consent of the Senate; because it is in the nature of things that the power which appoints removes also.

Again, Mr. Sherman said speaking of the words which were introduced into the first section and finally stricken out:

I wish, Mr. Chairman, that the words may be left out of the bill, without giving up the question either way as to the propriety of the measure.

The debate upon the bill relating to the department for foreign affairs occurred in the month of June, 1789; in the following month of August Congress was engaged in considering the bill establishing the Treasury Department. This bill originated in the House, and contained the phrase now found in it, being the same as that contained in the bill establishing the State Department.

The Senate was so far satisfied of the impolicy of making any declaration whatever upon the subject of removal, that the clause was struck out by an amendment. The House refused to concur, however, and the Senate, by the casting vote of the Vice-President, receded from the amendment.

All this shows that the doctrine of the right of removal by the President survived the debate only as a limited and doubtful right at most.

The results reached by the Congress of 1789 are conclusive upon the following points: that that body was of opinion that the power of removal was not in the President absolutely, to be exercised at all times and under all circumstances; and secondly, that during the sessions of the Senate the power of removal was vested in the President and Senate, to be exercised by their concurrent action; while the debate and the votes indicate that the power of the President to remove from office, during the vacation of the Senate, was, at best, a doubtful power under the Constitution.

It becomes us next to consider the practice of the government, under the Constitution, and in the presence of the action of the first Congress, by virtue of which the President now claims an absolute, unqualified, irresponsible power over all public officers, and this without the advice and consent of the Senate, or the concurrence of any other branch of the government. In the early years of the government the removal of a public officer by the President was a rare occurrence, and it was usually resorted to during the session of the Senate, for misconduct in office only, and accomplished by the appointment of a successor through the advice and consent of the Senate. Gradually a practice was introduced, largely through the example of Mr. Jefferson, of removing officers during the recess of the Senate, and filling their places under commissions to expire at the end of the next session. But it cannot be said that this practice became common until the election of General Jackson, in 1828. During his administration the practice of removing officers during the recesses of the Senate was largely increased, and in the year 1832, on the 18th of September, General Jackson removed Mr. Duane from the office of Secretary of the Treasury. This occurred, however, during a recess of the Senate. This act on his part gave rise to a heated debate in Congress, and an ardent controversy throughout the country, many of the most eminent men contending that there was no power in the President to remove a civil officer, even during the recess of the Senate. The triumph of General Jackson in that controversy gave a full interpretation to the words which had been employed in the statute of 1789.

But, at the same time, the limitations of that power in the President were clearly settled, both upon the law and upon the Constitution, that whatever might be his power of removal during a recess of the Senate, he had no right to make a removal during a session of the Senate, except upon the advice and consent of that body to the appointment of a successor. This was the opinion of Mr. Johnson himself, as stated by him in a speech made in the Senate on the 10th of January, 1861:

I meant that the true way to fight the battle was for us to remain here and occupy the places assigned to us by the Constitution of the country. Why did I make that statement? It was because on the 4th day of March next we shall have six majority in this body; and if, as some apprehended, the incoming administration shall show any disposition to make encroachments upon the institution of slavery, encroachments upon the rights of the States or any other violation of the Constitution, we, by remaining in the Union and standing at our places, will have the power to resist all these encroachments. How? We have the power even to reject the appointment of the Cabinet officers of the incoming President. Then, should we not be fighting the battle [in the Union by resisting even the organization of the administration in a constitutional mode, and thus, at the very start, disable an administration which was likely to encroach on our rights and to violate the Constitution of the country? So far as appointing even a minister abroad is concerned the incoming administration will have no power without our consent, if we remain here. It comes into office handcuffed, powerless to do harm. We, standing here, hold the balance of power in our hands; we can resist it at the very threshold effectually, and do it inside of the Union and in our house. The incoming administration has not even the power to appoint a postmaster, whose salary exceeds $1,000 a year, without consultation with, and the acquiescence of, the Senate of the United States. The President has not even the power to draw his salary, his $25,000 per annum, unless we appropriate it. (Congressional Globe, vol. , page .

It may be well observed, that for the purposes of this trial, and upon the question whether the President is or is not guilty under the first three articles exhibited against him by the House of Representatives, it is of no consequence

whether the President of the United States has power to remove a civil officer during a recess of the Senate. The fact charged and proved against the President, and on which, as one fact proved against him, we demand his conviction, is, that he attempted to remove Mr. Stanton from the office of Secretary of War during a session of the Senate. It cannot be claimed with any propriety that the act of 1789 can be construed as a grant of power to the President to an extent beyond the practice of the government for three-quarters of a century under the Constitution, and under the provisions of the law of 1789. None of the predecessors of Mr. Johnson, from General Washington to Mr. Lincoln, although the act of 1789 was in existence during all that period, had ever ventured to claim that either under that act, or by virtue of the Constitution, the President of the United States had power to remove a civil officer during a session of the Senate, without its consent and advice. The utmost that can be said is, that for the last forty years it had been the practice of the Executive to remove civil officers at pleasure during the recess of the Senate. While it may be urged that this practice, in the absence of any direct legislation upon the subject, had become the common law of the country, protecting the Executive in a policy corresponding to that practice, it is also true, for stronger reasons, that Mr. Johnson was bound by his oath of office to adhere to the practice of his predecessors in other particulars, none of whom had ever ventured to remove a civil officer from his office during the session of the Senate and appoint a successor, either permanent or *ad interim*, and authorize that successor to enter upon the discharge of the duties of such office. The case of Timothy explained, and it constitutes no exception. As far as is known to me the lists of removals and appointments introduced by the respondent do not sustain the claim of the answer in regard to the power of removal.

Hence it is that the act of 1789 is no security to this respondent, and hence it is that we hold him guilty of a violation of the Constitution and of his oath of office, under the first and third articles of impeachment, exhibited against him by the House of Representatives, and this without availing ourselves of the provisions of the tenure-of-office act of March 2, 1867.

I respectfully ask that the views now submitted, in reference to the act of 1789, may be considered in connection with the argument I have already offered, upon the true meaning of the provisions of the Constitution relating to the appointment of civil officers.

I pass now to the consideration of the act of the 13th of February, 1795, on which the President relies as a justification for his appointment of Lorenzo Thomas as Secretary of War *ad interim*. By this act it is provided:

> In case of vacancy in the office of Secretary of State, the Secretary of the Treasury, or of the Secretary of the Department of War, or of any other officer of either of the said departments, whose appointment is not in the head thereof, whereby they cannot perform the duties of their said respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize any person or persons, at his discretion, to perform the duties of the said respective offices until a successor be appointed or such vacancy be filled: *Provided*, That no one vacancy shall be supplied, in manner aforesaid, for a longer term than six months. (1 Stat. at Large, p. 415.)

The ingenuity of the the President and his counsel has led them to maintain that the phrase "in case of vacancy," used in this statute, relates to any and every vacancy, however produced. But the reading of the entire section, whether casually or carefully, shows that the purpose of the law was to provide a substitute temporarily in case of vacancy, whereby the person in office *could not perform the duties of his office*, and necessarily applied only to those contingencies of official life which put it out of the power of the person in office to discharge the duties of the place; such as sickness, absence or inability of any sort. And yet the President and his counsel contend that a removal by the President is a case of vacancy contemplated by the law, notwithstanding the limitation of the President in his power of appointing an officer temporarily, is to those cases

which render it impossible for the duly commissioned officer to perform the duties of his office. When it is considered, as I have shown, that the President had no power—and this without considering the tenure-of-office act of March 2, 1867—to create a vacancy during a session of the Senate, the act of 1795, even upon his construction, furnishes no defence whatever. But we submit that if he had possessed the power which he claims by virtue of the act of 1789, that the vacancy referred to in the act of 1795 is not such a vacancy as is caused by the removal of a public officer, but that that act is limited to those vacancies which arise unavoidably in the public service, and without the agency of the President. But there is in the section of the act of 1795, on which the President relies, a proviso which nullifies absolutely the defence which he has set up. This proviso is, that no one vacancy shall be supplied in manner aforesaid (that is, by a temporary appointment) for a longer term than six months. Mr. Johnson maintains that he suspended Mr. Stanton from the office of Secretary of War on the 12th of August last, not by virtue of the tenure-of-office act of March 2, 1867, but under a power incident to the general and unlimited power of removal, which, as he claims, is vested in the President of the United States, and that, from the 12th of August last, Mr. Stanton has not been entitled to the office of Secretary for the Department of War. If he suspended Mr. Stanton as an incident of his general power of removal, then his suspension, upon the President's theory, created a vacancy such as is claimed by the President under the statute of 1795. The suspension of Mr. Stanton put him in such a condition that he "could not perform the duties of the office." The President claims also to have appointed General Grant Secretary of War *ad interim* on the 12th of August last, by virtue of the statute of 1795. The proviso of that statute declares that no one vacancy shall be supplied in manner aforesaid (that is, by temporary appointment) for a longer term than six months. If the act of 1795 were in force, and if the President's theory of his rights under the Constitution and under that act were a valid theory, the six months during which the vacancy might have been supplied temporarily expired by limitation on the 12th day of February, 1868, and yet on the 21st day of February, 1868, the President appointed Lorenzo Thomas Secretary of War *ad interim* to the same vacancy, and this in violation of the statute which he pleads in his own defence. It is too clear for argument that if Mr. Stanton was lawfully suspended, as the President now claims, but not suspended under the tenure-of-office act, then the so-called restoration of Mr. Stanton on the 13th January was wholly illegal. But if the statute of 1795 is applicable to a vacancy created by suspension or removal, then the President has violated it by the appointment of General Thomas Secretary of War *ad interim*. And if the statute of 1795 is not applicable to a vacancy occasioned by a removal, then the appointment of General Thomas Secretary of War *ad interim* is without authority or the color of authority of law.

The fact is, however, that the statute of 1795 is repealed by the operation of the statute of the 20th of February, 1863. (Stat. at Large, vol. 12, p. 656.)

If senators will consider the provisions of the statute of 1863 in connection with the power of removal under the Constitution during a session of the Senate, by and with the advice and consent of the Senate, and the then recognized power of removal by the President during a recess of the Senate to be filled by temporary appointments, as was the practice previous to March 2, 1867, they will find that provision was made by the act of 1863 for every vacancy which could possibly arise in the public service.

The act of February 20, 1863, provides—

That in case of the death, *resignation*, absence from the seat of government, or sickness of the head of an executive department of the government, or of any officer of either of the said departments whose appointment is not in the head thereof, *whereby they cannot perform the*

duties of their respective offices, it shall be lawful for the President of the United States, in case he shall think it necessary, to authorize the head of any other executive department or other officer in either of said departments whose appointment is vested in the President, at his discretion to perform the duties of the said respective offices until a successor be appointed, or until such absence or inability shall cease: *Provided*, That no one vacancy shall be supplied in manner aforesaid for a longer term than six months.

Provision was thus made by the act of 1863 for filling all vacancies which could occur under any circumstances. It is a necessary rule of construction that all previous statutes making other and different provisions for the filling of vacancies are repealed by the operation of more recent statutes; and for the plain reason that it is inconsistent with any theory of government that there should be two legal modes in existence at the same time for doing the same thing.

If the view I have presented be a sound one, it is apparent that the President's conduct finds no support either in the Constitution, in the act of 1789, or in the legislation of 1795, on which he chiefly relies as a justification for the appointment of Thomas as Secretary of War *ad interim*. It follows, also, that if the tenure-of-office act had not been passed the President would have been guilty of a high misdemeanor, in that he issued an order for the removal of Mr. Stanton from office during the session of the Senate, in violation of the Constitution and of his own oath of office; that he was guilty of a high misdemeanor in the appointment of Lorenzo Thomas as Secretary of War *ad interim*, and this whether the act of the 13th of February, 1795, is in force, or whether the same has been repealed by the statute of 1863. His guilt is thus fully proved and established as charged in the first, second and third articles of impeachment exhibited against him by the House of Representatives, and this without considering the requirements or constitutionality of the act regulating the tenure of certain civil offices.

I pass now to the consideration of the tenure-of-office act. I preface what I have to say, by calling to your attention that portion of my argument already addressed to you, in which I have set forth and maintained, as I was able, the opinion that the President had no right to make any inquiry whether an act of Congress is or is not constitutional. That, having no right to make such inquiry, he could not plead that he had so inquired, and reached the conclusion that the act inquired about was invalid. You will also bear in mind the views presented, that this tribunal can take no notice of any argument or suggestion that a law deemed unconstitutional may be wilfully violated by the President. The gist of his crime is, that he intentionally disregarded a law, and, in the nature of the case, it can be no excuse or defence that such law, in his opinion, or in the opinion of others, was not in conformity with the Constitution.

In this connection, I desire to call your attention to suggestions made by the President, and by the President's counsel—by the President in his message of December, 1867, and by the President's counsel in his opening argument—that if Congress were by legislation to abolish a department of the government, or to declare that the President should not be Commander-in-chief of the army or the navy, that it would be the duty of the President to disregard such legislation. These are extreme cases, and not within the range of possibility. Members of Congress are individually bound by an oath to support the Constitution of the United States, and it is not to be presumed, even for the purpose of argument, that they would wantonly disregard the obligations of their oath, and enact in the form of law rules or proceedings in plain violation of the Constitution. Such is not the course of legislation, and such is not the character of the act we are now to consider. The bill regulating the tenure of certain civil offices was passed by a constitutional majority in each of the two houses, and it is to be presumed that each senator and representative who gave it his support did so in the belief that its provisions were in harmony with the provisions of the Constitution. We are now dealing with practical affairs, and conducting the government within the Constitution; and in reference to measures passed by

Congress under such circumstances, it is wholly indefensible for the President to suggest the course that in his opinion he would be justified in pursuing if Congress were openly and wantonly to disregard the Constitution, and inaugurate revolution in the government.

It is asserted by the counsel for the President that he took advice as to the constitutionality of the tenure-of-office act, and being of opinion that it was unconstitutional, or so much of it at least as attempted to deprive him of the power of removing the members of the cabinet, he felt it to be his duty to disregard its provisions; and the question is now put with feeling and emphasis whether the President is to be impeached, convicted, and removed from office for a mere difference of opinion. True, the President is not to be removed for a *mere* difference of opinion. If he had contented himself with the opinion that the law was unconstitutional, or even with the expression of such an opinion privately or officially to Congress, no exception could have been taken to his conduct. But he has attempted to act in accordance with that opinion, and in that action he has disregarded the requirements of the statute. It is for this action that he is to be arraigned, and is to be convicted. But it is not necessary for us to rest upon the doctrine that it was the duty of the President to accept the law as constitutional and govern himself accordingly in all his official doings. We are prepared to show that the law is in truth in harmony with the Constitution, and that its provisions apply to Mr. Stanton as Secretary for the Department of War.

The tenure-of-office act makes no change in the powers of the President and the Senate, during the session of the Senate, to remove a civil officer upon a nomination by the President, and confirmation by the Senate, of a successor. This was an admitted constitutional power from the very organization of the government, while the right now claimed by the President to remove a civil officer during a session of the Senate, without the advice and consent of the Senate, was never asserted by any of his predecessors, and certainly never recognized by any law or by any practice. This rule applied to heads of departments as well as to other civil officers. Indeed, it may be said, once for all, that the tenure by which members of the cabinet have held their places corresponds in every particular to the tenure by which other civil officers have held theirs. It is undoubtedly true that, in practice, members of the cabinet have been accustomed to tender their resignations upon a suggestion from the President that such a course would be acceptable to him. But this practice has never changed their legal relations to the President or to the country. There was never a moment of time, since the adoption of the Constitution, when the law or the opinion of the Senate recognized the right of the President to remove a cabinet officer during a session of the Senate, without the consent of the Senate given through the confirmation of a successor. Hence, in this particular the tenure-of-office act merely enacted and gave form to a practice existing from the foundation of the government—a practice in entire harmony with the provisions of the Constitution upon that subject. The chief change produced by the tenure-of-office act had reference to removals during the recess of the Senate. Previous to the 2d of March, 1867, as has been already shown, it was the practice of the President during the recesses of the Senate to remove civil officers and to grant commissions to other persons, under the third clause of the second section of the second article of the Constitution. This power, as has been seen, was a doubtful one in the beginning. The practice grew up under the act of 1789, but the right of Congress by legislation to regulate the exercise of that power was not questioned in the great debate of that year, nor can it reasonably be drawn into controversy now.

The act of March 2d, 1867, declares that the President shall not exercise the power of removal, absolutely, during the recess of the Senate, but that if any officer shall be shown, by evidence satisfactory to the President, to be

guilty of misconduct in office, or of crime, or for any reason shall become incapable or legally disqualified to perform his duties, the President may suspend him from office and designate some suitable person to perform temporarily the duties of such office until the next meeting of the Senate and the action of the Senate thereon.

By this legislation the removal is qualified and is made subject to the final action of the Senate instead of being absolute, as was the fact under the practice theretofore prevailing. It is to be observed, however, that this feature of the act regulating the tenure of certain civil offices is not drawn into controversy by these proceedings, and therefore it is entirely unimportant to the President whether that provision of the act is constitutional or not. I can, however, entertain no doubt of its constitutionality. The record of the case shows that Mr. Stanton was suspended from office during the recess, but was removed from office, as far as an order of the President could effect his removal, during a session of the Senate. It is also wholly immaterial to the present inquiry whether the suspension of Mr. Stanton on the 12th of August, 1867, was made under the tenure-of-office act, or in disregard of it, as the President now asserts. It being thus clear, that so much of the act as relates to appointments and removals from office during the session of the Senate is in harmony with the practice of the government from the first, and in harmony with the provisions of the Constitution on which that practice was based, and it being admitted that the order of the President for the removal of Mr. Stanton was issued during a session of the Senate, it is unnecessary to inquire whether the other parts of the act are constitutional or not, and also unnecessary to inquire what the provisions of the act are in reference to the heads of the several executive departments. I presume authorities are not needed to show that a law may be unconstitutional and void in some of its parts, and the remaining portions continue in full force.

The body of the first section of the act regulating the tenure of certain civil offices is in these words:

> Every person holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is, and shall be entitled, to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided.

Omitting for the moment to notice the exception, there can be no doubt that this provision would have applied to the Secretary of War, and to every other civil officer under the government; nor can there be any doubt that the removal of Mr. Stanton during a session of the Senate is a misdemeanor by the law, and punishable as such under the sixth section of the act, unless the body of the section quoted is so controlled by the proviso as to take the Secretary of War out of its grasp. The proviso is in these words:

> That the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General shall hold their offices respectively for and during the term of the President by whom they may have been appointed, and one month thereafter, subject to removal by and with the advice and consent of the Senate.

We maintain that Mr. Stanton, as Secretary of War, was, on the second day of March, 1867, within and included under the language of the proviso, and was to hold his office for and during the term of the President by whom he had been appointed, and one month thereafter, subject to removal, however, by and with the advice and consent of the Senate. We maintain that Mr. Stanton was then holding the office of Secretary of War, for and in the term of President Lincoln, by whom he had been appointed; that that term commenced on the fourth of March, 1865, and will end on the fourth of March, 1869. The Constitution defines the meaning of the word "term." When speaking of the President, it says: "He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows."

Now, then, although the President first elected may die during his term, the office and the term of the office still remain. Having been established by the Constitution, it is not in any degree dependent upon the circumstance whether the person elected to the term shall survive to the end or not. It still is a Presidential term. It still is in law the term of the President who was elected to the office. The Vice-President was chosen at the same time, and elected for the same term. But it is the term of a different office from that of President—the term of the office of Vice-President. Mr. Johnson was elected to the office of Vice-President for the term of four years. Mr. Lincoln was elected to the office of President for the term of four years. Mr. Lincoln died in the second month of his term, and Mr. Johnson succeeded to the office.

It was not a new office; it was not a new term. He succeeded to Mr. Lincoln's office, and for the remainder of Mr. Lincoln's term of office. He is serving out Mr. Lincoln's term as President. The law says that the Secretaries shall hold their offices respectively for and during the term of the President by whom they may have been appointed. Mr. Lincoln's term commenced on the 4th of March, 1865. Mr. Stanton was appointed by Mr. Lincoln; he was in office in Mr. Lincoln's term, when the act regulating the tenure of certain civil officers was passed; and by the proviso of that act he was entitled to hold that office until one month after the 4th of March, 1869, unless he should be sooner removed therefrom, by and with the advice and consent of the Senate.

The act of March 1, 1792, concerning the succession, in case the office of President and Vice-President both become vacant, recognizes the presidential term of four years as the constitutional term. Any one can understand that in case of vacancy in the office of President and Vice-President, and in case of a new election by the people, that it would be desirable to make the election for the remainder of the term. But the act of 1792 recognizes the impossibility of this course in the section which provides that the term of four years for which a President and Vice-President shall be elected (that is, in case of a new election, as stated) shall in all cases commence on the fourth day of March next succeeding the day on which the votes of the electors shall have been given.

It is thus seen that by an election to fill a vacancy, the government would be so far changed in its practical working that the subsequent elections of President, except by an amendment to the Constitution, could never again occur in the years divisible by four, as at present, and might not answer to the election of members of the House of Representatives, for the presidential elections might occur in the years not divisible by two. The Congress of 1792 acted upon the constitutional doctrine that the presidential term is four years and cannot be changed by law.

On the 21st of February, 1868, while the Senate of the United States was in session, Mr. Johnson, in violation of the law—which, as we have already seen, is in strict harmony in this particular with the Constitution and with the practice of every administration under the Constitution from the beginning of the government—issued an order for the removal of Mr. Stanton from his office as Secretary for the Department of War. If, however, it be claimed that the proviso does not apply to the Secretary of War, then he does not come within the only exception made in the statute to the general provision in the body of the first section already quoted; and Mr. Stanton having been appointed to office originally by and with the advice and consent of the Senate, could only be removed by the nomination and appointment of a successor, by and with the advice and consent of the Senate. Hence, upon either theory it is plain that the President violated the tenure-of-office act in the order which he issued on the 21st day of February, A. D. 1868, for the removal of Mr. Stanton from the office of Secretary for the Department of War, the Senate of the United States being then in session.

In support of the view I have presented, I refer to the official record of the

amendments made to the first section of the tenure-of-office act. On the 18th of January, 1867, the bill passed the Senate, and the first section thereof was in these words:

That every person [excepting the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General] holding any civil office to which he has been appointed by and with the advice and consent of the Senate, and every person who shall hereafter be appointed to any such office, and shall become duly qualified to act therein, is and shall be entitled to hold such office until a successor shall have been in like manner appointed and duly qualified, except as herein otherwise provided.

On the second day of February the House passed the bill with an amendment striking out the words included in brackets. This action shows that it was the purpose of the House to include heads of departments in the body of the bill, and subject them to its provisions as civil officers who were to hold their places by and with the advice and consent of the Senate, and subject, during the session of the Senate, to removal by and with the advice and consent of the Senate only; but subject to suspension under the second section during a recess of the Senate as other civil officers, by virtue of the words at the close of the section, "except as herein otherwise provided." At the time the bill was pending between the two houses there was no proviso to the first section, and the phrase "except as otherwise herein provided," related necessarily to the second and to the subsequent sections of the bill. On the 6th of February the Senate refused to agree to the House amendment, and by the action of the two houses the bill was referred to a committee of conference. The conference committee agreed to strike out the words in brackets agreeably to a vote of the House, but as a recognition of the opinion of the Senate the proviso was inserted which modified in substance the effect of the words stricken out, under the lead of the House, only in this, that the cabinet officers referred to in the body of the section as it passed the House were to hold their offices as they would have held them if the House amendment had been agreed to without condition, with this exception, that they were to retire from their offices in one month after the end of the term of the President by whom they might have been appointed to office. The object and effect of this qualification of the provision for which the House contended, was to avoid fastening, by operation of law, upon an incoming President the cabinet of his predecessor, with no means of relieving himself from them unless the Senate of the United States was disposed to concur in their removal.

In short, they were to retire by operation of law, at the end of one month after the expiration of the term of the President by whom they had been appointed, and in this particular their tenure of office was distinguished by the proviso, from the tenure by which other civil officers mentioned in the body of the section were to hold their offices, and their tenure of office is distinguished in no other particular.

The counsel who opened the cause for the President was pleased to read from the Globe the remarks made by Mr. Schenck, in the House of Representatives, when the report of the conference committee was under discussion. But he read only a portion of the remarks of that gentleman, and connected with them observations of his own, by which he may have led the Senate into the error that Mr. Schenck entertained the opinion as to the effect of the proviso which is now urged by the respondent; but so far from this being the case, the statement made by Mr. Schenck to the House is exactly in accordance with the doctrine now maintained by the managers on the part of the House of Representatives. After Mr. Schenck had made the remarks quoted by the counsel for the respondent, Mr. Le Blond, of Ohio, rose and said:

I would like to inquire of the gentleman who has charge of this report whether it becomes necessary that the Senate shall concur in all appointments of executive officers, and that none of them can be removed after appointment without the concurrence of the Senate?

Mr. Schenek says, in reply:

That is the case; but their terms of office are limited, (as they are not now limited by law,) so that they expire with the term of service of the President who appoints them, and one month after, in case of death or other accident, until others can be substituted for them by the incoming President.

Mr. Le Blond, continuing, said:

I understand, then, this to be the effect of the report of the committee of conference: In the event of the President finding himself with a cabinet officer who does not agree with him, and whom he desires to remove, he cannot do so, and have a cabinet in keeping with his own views, unless the Senate shall concur.

To this Mr. Schenek replies:

The gentleman certainly does not need that information from me, as this subject has been fully debated in this House.

Mr. Le Blond said, finally:

Then I hope the House will not agree to the report of the committee of conference.

This debate in the House shows that there was there and then no difference of opinion between Mr. Schenck, who represented the friends of the bill, and Mr. Le Blond, who represented the opponents of the bill, that its effect was to confirm the Secretaries who were then in office, in their places, until one month after the expiration of Mr. Lincoln's term of office, to wit, the fourth day of March, 1869, unless, upon the nomination of successors, they should be removed by and with the advice and consent of the Senate. Nor does the language used by the honorable senator from Ohio, who reported the result of the conference to the Senate, justify the inference which has been drawn from it by the counsel for the respondent. The charge made by the honorable senator from Wisconsin, which the honorable senator from Ohio was refuting, seems to have been, in substance, that the first section of the bill and the proviso to the first section of the bill had been framed with special reference to Mr. Johnson as President, and to the existing condition of affairs. In response to this, the honorable senator from Ohio said:

I say that the Senate have not legislated with a view to any persons or any President, and therefore he commences by asserting what is not true. We do not legislate in order to keep in the Secretary of War, the Secretary of the Navy, or the Secretary of State.

It will be observed that this language does not indicate the opinion of the honorable senator as to the effect of the bill; but it is only a declaration that the object of the legislation was not that which had been intimated or alleged by the honorable senator from Wisconsin. This view of the remarks of the honorable senator from Ohio is confirmed by what he afterwards said in reply to the suggestion that members of the cabinet would hold their places against the wishes of the President, when he declares that under such circumstances he, as a senator, would consent to their removal at any time, showing most clearly that he did not entertain the idea that under the tenure-of-office act it would be in the power of the President to remove a cabinet officer without the advice and consent of the Senate. And we all agree that in ordinary times, and under ordinary circumstances, it would not only be just and proper for a cabinet officer to tender his resignation at once, upon the suggestion of the President that it would be acceptable, but we also agree that it would be the height of personal and official indecorum if he were to hesitate for a moment as to his duty in that particular. But the justification of Mr. Stanton, and his claim to the gratitude and the encomiums of his countrymen, is, that when the nation was imperilled by the usurpations of a criminally-minded chief magistrate, he asserted his constitutional and legal rights to the office of Secretary for the Department of War, and thus by his devotion to principle, and at great personal sacrifices, he has done more than any other man since the close of the rebellion to protect the interests and maintain the rights of the people of the country.

But the strength of the view we entertain of the meaning and scope of the

tenure-of-office act, is nowhere more satisfactorily demonstrated than in the inconsistencies of the argument which has been presented by the learned counsel for the respondent in support of the President's positions. He says, speaking of the first section of the act regulating the tenure of certain civil offices. "Here is a section, then, the body of which applies to all civil officers, as well to those then in office, as to those who should thereafter be appointed. The body of this section contains a declaration that every such officer 'is,' that is, if he is now in office, and 'shall be,' that is, if he shall hereafter be appointed to office, entitled to hold until a successor is appointed and qualified in his place. That is the body of the section." This language of the eminent counsel is not only an admission, but it is a declaration that the Secretary for the Department of War, being a civil officer, as is elsewhere admitted in the argument of the counsel for the respondent is included in and covered and controlled by the language of the body of this section. It is a further admission that in the absence of the proviso, the power of the President over the Secretary for the Department of War would correspond exactly to his power over any other civil officer, which would be merely the power to nominate a successor whose confirmation by the Senate, and appointment, would work the removal of the person in office. When the counsel for the respondent, proceeding in his argument, enters upon an examination of the proviso, he maintains that the language of that proviso does not include the Secretary for the Department of War. If he is not included in the language of the proviso, then upon the admission of the counsel he is included in the body of the bill, so that for the purposes of this investigation and trial it is wholly immaterial whether the proviso applies to him or not. If the proviso does not apply to the Secretary for the Department of War, then he holds his office, as in the body of the section expressed, until removed therefrom by and with the advice and consent of the Senate. If he is covered by the language of the proviso, then a limitation is fixed to his office, to wit: that it is to expire one month after the close of the term of the President by whom he has been appointed, subject, however, to previous removal by and with the advice and consent of the Senate.

I have already considered the question of intent on the part of the President, and maintained that in the wilful violation of the law he discloses a criminal intent which cannot be controlled or qualified by any testimony on the part of the respondent.

The counsel for the respondent, however, has dwelt so much at length on the question of intent, and such efforts have been made during the trial to introduce testimony upon this point, that I am justified in recurring to it for a brief consideration of the arguments and views bearing upon and relating to that question. If a law passed by Congress be equivocal or ambiguous in its terms, the Executive, being called upon to administer it, may apply his own best judgment to the difficulties before him, or he may seek counsel from his official advisers or other proper persons; and acting thereupon, without evil intent or purpose, he would be fully justified, and upon no principle of right could he be held to answer as for a misdemeanor in office. But that is not this case. The question considered by Mr. Johnson did not relate to the meaning of the tenure-of-office act. He understood perfectly well the intention of Congress, and he admitted in his veto message that that intention was expressed with sufficient clearness to enable him to comprehend and state it. In his veto message of the 2d of March, 1867, after quoting the first section of the bill to regulate the tenure of certain civil offices, he says:

> In effect the bill provides that the President shall not remove from their places *any civil officers* whose terms of service are not limited by law without the advice and consent of the Senate of the United States. The bill, in this respect, conflicts, in my judgment, with the Constitution of the United States.

His statement of the meaning of the bill relates to all civil officers, to the

members of his cabinet as well as to others, and is a declaration that, under that bill, if it became a law, none of those officers could be removed without the advice and consent of the Senate. He was, therefore, in no doubt as to the intention of Congress as expressed in the bill submitted to him for his consideration, and which afterwards became the law of the land. He said to the Senate, "If you pass this bill, I cannot remove the members of my cabinet." The Senate and the House in effect said, "We so intend," and passed the bill by a two-thirds majority. There was then no misunderstanding as to the meaning or intention of the act. His offence, then, is not, that upon an examination of the statute he misunderstood its meaning and acted upon a misinterpretation of its true import, but that understanding its meaning precisely as it was understood by the Congress that passed the law, precisely as it is understood by the House of Representatives to-day, precisely as it is presented in the articles of impeachment, and by the managers before this Senate, he, upon his own opinion that the same was unconstitutional, deliberately, wilfully and intentionally disregarded it. The learned counsel say that he had a right to violate this law for the purpose of obtaining a judicial determination. This we deny. The constitutional duty of the President is to obey and execute the laws. He has no authority under the Constitution, or by any law, to enter into any schemes or plans for the purpose of testing the validity of the laws of the country, either judicially or otherwise. Every law of Congress may be tested in the courts, but it is not made the duty of any person to so test the laws. It is not specially the right of any person to so test the laws, and the effort is particularly offensive in the Chief Magistrate of the country to attempt by any process to annul, set aside or defeat the laws which by his oath he is bound to execute. Nor is it any answer to say, as is suggested by the counsel for the respondent, that "there never could be a judicial decision that a law is unconstitutional, inasmuch as it is only by disregarding a law that any question can be raised judicially under it." If this be true, it is no misfortune. But the opposite theory, that it is the duty or the right of the President to disregard a law for the purpose of ascertaining judicially whether he has a right to violate a law, is abhorrent to every just principle of government, and dangerous in the highest degree to the existence of free institutions.

But his alleged purpose to test the law in the courts is shown to be a pretext merely. Upon his own theory of his rights, he could have instituted proceedings by information in the nature of a *quo warranto* against Mr. Stanton on the 13th of January, 1868. More than three months have passed, and he has done nothing whatever. When by Mr. Stanton's action Lorenzo Thomas was under arrest, and proceedings were instituted which might have tested the legality of the tenure-of-office act, Mr. Cox, the President's special counsel, moved to have the proceedings dismissed, although Thomas was at large upon his own recognizance. Can anybody believe that it was Mr. Johnson's purpose to test the act in the courts? But the respondent's insincerity, his duplicity, is shown by the statement which he made to General Sherman in January last. Sherman says, "I asked him why lawyers could not make a case, and not bring me, or an officer, into the controversy? His answer was, 'that it was found impossible, or a case could not be made up;' 'but,' said he, 'if we can bring the case to the courts, it would not stand half an hour.'" He now says his object was to test the case in the courts. To Sherman he declares that a case could not be made up, but if one could be made up the law would not stand half an hour. When a case was made up which might have tested the law, he makes haste to get it dismissed. Did ever audacity and duplicity more clearly appear in the excuses of a criminal?

This brief argument upon the question of intent seems to me conclusive, but I shall incidentally refer to this point in the further progress of my remarks.

The House of Representatives does not demand the conviction of Andrew

Johnson, unless he is guilty in the manner charged in the articles of impeachment; nor does the House expect the managers to seek a conviction except upon the law and the facts considered with judicial impartiality. But I am obliged to declare that I have no capacity to understand those processes of the human mind by which this tribunal, or any member of this tribunal, can doubt, can entertain a reasonable doubt, that Andrew Johnson is guilty of high misdemeanors in office, as charged in each of the first three articles exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, issued an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War while the Senate of the United States was in session, and without the advice and consent of the Senate, in violation of the Constitution of the United States and of his oath of office, and of the provisions of an act passed March 2, 1867, entitled "An act regulating the tenure of certain civil offices," and that he did this with intent so to dó; and thereupon, we demand his conviction under the first of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, violated the Constitution and his oath of office, in issuing an order for the removal of Edwin M. Stanton from the office of Secretary for the Department of War during the session of the Senate, and without the advice and consent of the Senate, and this without reference to the tenure-of-office act; and thereupon we demand his conviction under the first of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, did issue and deliver to one Lorenzo Thomas a letter of authority in writing authorizing and empowering said Thomas to act as Secretary of War *ad interim*, there being no vacancy in said office, and this while the Senate of the United States was in session, and without the advice and consent of the Senate, in violation of the Constitution of the United States, of his oath of office, and of the provisions of an act entitled "An act regulating the tenure of certain civil offices," and all this with the intent so to do; and, thereupon, we demand his conviction under the second of the articles of impeachment exhibited against him by the House of Representatives.

We have charged and proved that Andrew Johnson, President of the United States, in the appointment of Lorenzo Thomas to the office of Secretary of War *ad interim*, acted without authority of law, and in violation of the Constitution and of his oath of office; and this without reference to the tenure-of-office act; and thereupon we demand his conviction under the third of the articles of impeachment exhibited against him by the House of Representatives.

At this point the honorable manager yielded for an adjournment.

Mr. CONKLING. I move that the Senate sitting for this trial adjourn.

The CHIEF JUSTICE. The Senator from New York moves that the Senate sitting as a court of impeachment adjourn until to-morrow at eleven o'clock.

The motion was agreed to; and the Senate sitting for the trial of the impeachment adjourned.